# UNITED STATES DISTRICT COURT
# FOR THE
# MIDDLE DISTRICT OF PENNSYLVANIA
# RULES OF COURT

AS AMENDED 1983, 1985, JANUARY 1 AND NOVEMBER 1988,
DECEMBER 1993, MAY 1995, APRIL 1997, AUGUST 1999, DECEMBER 2001

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# UNITED STATES DISTRICT COURT
# FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

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SCRANTON
SEP 28 2001
PER _____ DEPUTY CLERK

**IN RE: AMENDMENTS OF LOCAL RULES** : **MISC.** 3:01-MS-0169

## ORDER

**NOW, THIS** 28th **DAY OF SEPTEMBER, 2001**, the judges of this Court having approved and adopted amendments to the Local Rules of Court, effective December 1, 2001, the Clerk of Court is hereby directed to enter this order of adoption with a copy of the Amended Local Rules of Court, as attached hereto, on the record of the Court.

This Order may be executed in counterparts.

Thomas I. Vanaskie
Chief Judge

Richard P. Conaboy
U.S. District Judge

A. Richard Caputo
U.S. District Judge

Sylvia H. Rambo
U.S. District Judge

James M. Munley
U.S. District Judge

William W. Caldwell
U.S. District Judge

Yvette Kane
U.S. District Judge

Edwin M. Kosik
U.S. District Judge

William J. Nealon
U.S. District Judge

James F. McClure, Jr.
U.S. District Judge

Malcolm Muir
U.S. District Judge

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# UNITED STATES DISTRICT COURT
# FOR THE
# MIDDLE DISTRICT OF PENNSYLVANIA

## RULES OF COURT

## SECTION I

## CHAPTER I

## SCOPE OF RULES

### LR 1.1 Application of Rules.

These rules apply to all proceedings in this court whether criminal or civil unless specifically provided to the contrary or not applicable in the context.

### LR 1.2 Standing Orders.

Unless revoked expressly or by necessary implication by these rules, all standing orders of court now in effect shall remain in effect.

### LR 1.3 Suspension of Rules.

The court may suspend these rules in individual cases by written order. When a judge of this court issues any order in a specific case which is not consistent with these rules, such order shall constitute a suspension of these rules for such case only and only to the extent that it is inconsistent. By way of illustration, but not of limitation, a judge of this court may issue an order in a specific case governing the practice and procedure, in whole or in part, in that case.

### LR 1.4 Definition of Term "Party" as Used in These Rules.

Wherever used in these rules, the term "party", whether in the singular or plural, shall mean the party or parties appearing in the action *pro se*, or the attorney or attorneys of record for such party or parties, where appropriate.

## CHAPTER II

## COMMENCEMENT OF ACTION/PARTIES

### LR 4.1 Service of Process.

Plaintiff or plaintiff's attorney shall be responsible for prompt service of the summons and a copy of the complaint as provided in Fed.R.Civ.P.4. Service shall be made by anyone who is not a party and is not less than 18 years of age. In order that a scheduling conference as required by Fed.R.Civ.P.16(b) can be arranged promptly, immediate service of process should be effected and an affidavit of such service shall be filed within ten (10) days thereafter. Where the plaintiff is the United States, an agent or instrumentality thereof, service shall be pursuant to 28 U.S.C. § 566(c). Where the plaintiff is *pro se*, service shall be pursuant to Fed.R.Civ.P.4(c)(2).

### LR 4.2 Proof of Service of All Other Pleadings and Papers.

Proof of service of all other pleadings and papers required or permitted to be served, other than those for which a method of proof is prescribed in the Federal Rules of Civil Procedure, shall be by written acknowledgment of service, by affidavit of the person making service or by certification of counsel. A party who has been prejudiced by failure to receive due notice may apply to the court for appropriate relief. Proof of service of discovery material shall not be filed unless required in accordance with Local Rule 5.4.

### LR 4.3 Payment of Fees in Advance.

The clerk shall not be required to enter any civil action, file any paper or issue any process therein, nor shall the marshal be required to serve any paper or perform any service unless the fees therefor shall first be paid by the party requesting the same. This rule shall not apply in actions properly instituted or defended *in forma pauperis* under applicable law.

### LR 4.4 Collection of Clerk's and Marshal's Fees.

In all civil actions prosecuted to final judgment or settled by the parties, in which the costs have not been paid or provided for, the clerk or marshal to whom they are due shall be entitled to an order requiring the party against whom such judgment is entered or in favor of whom such settlement is made, or otherwise as directed by the court, to pay these costs, in default of which execution may issue in the name of the clerk or the marshal therefor as the case may be. Where no action of any kind has been taken by any party in any civil action for two (2) years or more, the clerk or marshal to whom any costs may be due may apply to the court, and the court may enter an appropriate order that such costs be taxed and require any party to pay such costs, and in default thereof that any claim or defense of such party be dismissed. This rule shall not apply in actions properly instituted or defended *in forma pauperis* under applicable law.

**LR 4.5 Notification of Claim of Unconstitutionality.**

To enable the court to comply with 28 U.S.C. § 2403 and Fed.R.Civ.P.24(c):

(a) Whenever in any action, suit or proceeding to which the United States or any agency, officer or employee thereof is not a party, the constitutionality of any Act of Congress affecting the public interest is drawn in question, the party raising such question shall give written notice to the court giving the title of the cause, a reference to the questioned statute sufficient for its identification, and the respects in which it is claimed to be unconstitutional.

(b) Whenever in any action, suit or proceeding to which a State or any agency, officer, or employee thereof is not a party, the constitutionality of any statute of that State affecting the public interest is drawn in question, the party raising such question shall give written notice to the court giving the title of the cause, a reference to the questioned statute sufficient for its identification, and the respects in which it is claimed to be unconstitutional.

**LR 4.6 Reserved.**

**LR 4.7 *In Forma Pauperis* Proceedings Initiated by Prisoners under 28 U.S.C. § 1915**

(a) Civil complaints filed by prisoners seeking *in forma pauperis* status under 28 U.S.C. § 1915 are subject to the provisions of the Prison Litigation Reform Act ("PLRA"). In order to promote the speedy, just and efficient administration of civil rights complaints subject to the PLRA, the court has established forms to be used by prisoners for filing civil rights actions. The prisoner/plaintiff should complete and file the court-approved forms when initiating a civil complaint.

(b) The court-approved forms consist of (1) a cover sheet, (2) a complaint, (3) an application to proceed *in forma pauperis*, and (4) an authorization form. The authorization form, when completed by the plaintiff, directs the agency holding the plaintiff in custody to forward to the clerk of court a certified copy of the plaintiff's institutional trust fund account and to disburse from the plaintiff's account the full statutory filing fee in amounts specified by 28 U.S.C. § 1915(b). Forms may be obtained from the clerk of court.

(c) Properly completing and filing the authorization form satisfies the plaintiff's obligation under 28 U.S.C. § 1915(a)(2) to submit a certified copy of the plaintiff's trust fund account with the complaint.

**LR 4.8 *In Forma Pauperis* Proceedings in Habeas Corpus Actions.**

For local rule regarding filing *in forma pauperis* in a Habeas Corpus action, see LR 83.32.3.

## CHAPTER III

## SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

### LR 5.1 Size and Other Physical Characteristics of Papers and Other Documents.

Papers or other documents filed in this court, except original or true copies of exhibits, shall be on paper approximating eight and one-half (8½) inches by eleven (11) inches in size. Any paper or other document filed shall be sufficient as to format and other physical characteristics if it substantially complies with the following requirements:

(a) Prepared on white paper (except for covers, dividers, and similar sheets) of good quality with typed or printed matter six and one-half (6½) inches by nine and one-half (9½) inches.

(b) The first sheet shall contain a three (3) inch space from the top of the paper for all court stampings, filing notices, etc.

(c) The lettering or typeface shall be clearly legible and shall not be smaller than 14 point word processing font or, if typewritten, shall not be smaller than pica. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. The font type and size used in footnotes shall be the same as that used in the body of the brief. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.

(d) The lettering or typeface shall be on only one (1) side of a page, except that exhibits and similar supporting documents may be lettered on both sides of a page.

(e) All papers and other documents shall be two hole punched at the top and firmly bound or securely fastened at the top; the use of plastic strips or other such devices is prohibited.

(f) Exhibits to a brief or motion shall accompany the brief or motion, but shall not be attached to or bound with the brief or motion. Exhibits shall be bound separately, using either lettered or numbered tabs to identify each exhibit. Each exhibit also shall be identified by letter or number on the top right hand corner of the first page of the exhibit. Exhibits to a complaint may be attached to the complaint, but shall be identified in the same manner as exhibits filed with motions and briefs. In all instances where more than one exhibit is part of the same filing, there shall be a table of contents for the exhibits.

(g) A proposed order shall accompany each motion or other request for relief, and shall be bound separately.

(h) Each motion and each brief shall be a separately bound document.

(i) Exceptions to the provisions of this rule may be made only upon motion and for good cause or in the case of papers filed in litigation commenced *in forma pauperis*.

### LR 5.2 Copies of Documents to be Filed with the Clerk.

As to any pleading, motion, memorandum, brief or other required to be filed with the court, there shall be filed with the clerk the original and two (2) copies. Documents shall not be faxed to a judge or the clerk's office without prior leave of court.

**LR 5.3 Assigned Judge's Name on First Page of Documents.**

After a case is assigned to a judge, all documents filed must include that judge's name in parenthesis directly below the case number.

**LR 5.4 Service and Filing of Discovery Material.**

(a) The parties in *pro se* cases, Health and Human Services cases (Social Security Appeals), and U.S. Government loan cases shall not be obligated to meet and confer prior to instituting discovery. Discovery shall commence no later than thirty (30) days from the date the complaint is served upon the defendant(s).

(b) Interrogatories, requests for disclosures, requests for documents, requests for admissions, and answers and responses thereto shall be served upon other counsel and parties but shall not be filed with the court except as authorized by a provision of the Federal Rules of Civil Procedure or upon an order of the court. The party responsible for serving a discovery request shall retain and become the custodian of the original response. Proof of service or certificates of service of discovery material shall not be filed separately with the clerk. The original of all depositions upon oral examination shall be retained by the party taking such deposition.

(c) If relief is sought under any of the Federal Rules of Civil Procedure, copies of the discovery matters in dispute shall be filed with the court contemporaneously with any motion filed under these rules by the party seeking to invoke the court's relief.

(d) When documentation of discovery not previously in the record is needed for appeal purposes, upon an application and order of the court or by stipulation of counsel, the necessary discovery papers shall be filed with the clerk.

**LR 5.5 Form of Service of Interrogatories.**

For local rule on form of service of interrogatories, see LR 33.1.

## CHAPTER IV

## PLEADINGS AND MOTIONS

### LR 7.1 Pretrial Motions to be Written.

All motions filed prior to trial must be written, and shall contain a certification by counsel for the movant that he or she has sought concurrence in the motion from each party, and that it has been either given or denied. No concurrence need be sought in *pro se* prisoner cases. A certificate of nonconcurrence does not eliminate the need for counsel to comply with Local Rule 26.3 relating to conferences between counsel in all discovery motions directed toward a resolution of the motion. Every motion shall be accompanied by a form of order which, if approved by the court, would grant the relief sought in the motion.

### LR 7.2 Service of Pretrial Documents by Movant and Respondent.

The movant and respondent shall serve copies of their respective papers upon the opposing party at the time such papers are filed with the clerk.

### LR 7.3 Exhibits and Other Documents Substantiating Pretrial Motions.

When allegations of fact are relied upon in support of a motion, all pertinent affidavits, transcripts of depositions, and other documents must be filed simultaneously with the motion whenever practicable. In any event, such supporting documents must be filed within ten (10) days after the motion has been filed, unless otherwise ordered by the court. All supporting exhibits and documents shall be filed and identified in the manner required by LR 5.1(f).

### LR 7.4 Motions for Summary Judgment.

For local rule regarding the filing of Motions for Summary Judgment, see LR 56.1.

### LR 7.5 Submission of Briefs Supporting Pretrial Motions.

Within ten (10) days after the filing of any motion filed prior to trial, the party filing the same shall file an original and two (2) copies of a brief with the clerk and shall serve copies thereof on all parties. If the motion seeks a protective order, a supporting brief shall be filed with the motion. Unless otherwise ordered by the court, if supporting legal briefs are not filed within the time provided in this rule such motion shall be deemed to be withdrawn. Briefs shall not be required: (a) In support of a motion for enlargement of time if the reasons for the request are fully stated in the motion, (b) In support of any motion or a stipulation which has concurrence of all counsel, and the reasons for the motion or the stipulation and the relief sought are fully stated therein, or (c) In support of a motion for appointment of counsel.

### LR 7.6 Submission of Briefs or Memoranda Opposing Pretrial Motions.

Any party opposing any motion shall file an original and two (2) copies of a responsive brief, together with any opposing affidavits, deposition transcripts or other documents, within fifteen (15)

days after service of the movant's brief. Any respondent who fails to comply with this rule shall be deemed not to oppose such motion.

**LR 7.7 Pretrial Reply Briefs or Memoranda.**

An original and two (2) copies of a brief in reply to matters argued in respondent's brief may be filed by the moving party within ten (10) days after service of the respondent's brief. No further briefs may be filed without leave of court.

**LR 7.8 Contents and Length of Pretrial Briefs.**

**(a) Contents of Briefs.**

Briefs shall contain complete citations of all authorities relied upon, including whenever practicable, citations both to official and unofficial reports. No brief may incorporate by reference all or any portion of any other brief. A copy of any unpublished opinion which is cited must accompany the brief as an attachment. The brief of the moving party shall contain a procedural history of the case, a statement of facts, a statement of questions involved, and argument. The brief of the opposing party may contain a counter statement of the facts and of the questions involved and a counter history of the case. If counter statements of facts or questions involved are not filed, the statements of the moving party will be deemed adopted. The brief of each party, if more than fifteen (15) pages in length, shall contain a table of contents, with page references, and table of citations of the cases, statutes and other authorities referred to therein, with references to the pages at which they are cited. A brief may address only one motion, except in the case of cross motions for summary judgement.

**(b) Length of Briefs**

(1) Unless the requirements of Local Rule 7.8 (b)(2) and (3) are met, no brief shall exceed fifteen (15) pages in length.

(2) A brief may exceed fifteen (15) pages so long as it does not exceed 5,000 words. If a brief is filed in accordance with this subsection, counsel, or an unrepresented party, must attach a certificate (subject to Fed. R. Civ. P. 11) that the brief complies with the word-count limit described in this subsection. The person preparing the certificate may rely on the word count feature of the word-processing system used to prepare the brief. The certificate must state the actual number of words in the brief.

(3) No brief exceeding the limits described in this rule may be filed without prior authorization. Any motion seeking such authorization shall specify the length of the brief requested and shall be filed at least two (2) working days before the brief is due.

**LR 7.9 Oral Arguments on Pretrial Motions.**

Promptly upon the expiration of the time for filing of all briefs in support of or in opposition to pretrial motions, the judge to whom the action has been assigned may order oral argument at such time and place as the judge shall direct, either in open court or in chambers. The judge, in his or her discretion, may grant oral argument *sua sponte* or at the request of either or both parties.

**LR 7.10 Motions for Reconsideration or Reargument.**

Any motion for reconsideration or reargument shall be filed within ten (10) days after the

entry of the judgment, order or decree concerned.

**LR 7.20 Post-trial Motions to be Written.**

All motions after trial must be written and shall contain a certification by counsel for the movant that he or she has sought concurrence in the motion from each party and that it has been either given or denied. Every motion shall be accompanied by a form order which, if approved by the court, would grant the relief sought in the motion.

**LR 7.21 Service of Post-trial Motions by Movant and Respondent.**

The movant and respondent shall serve copies of their respective papers upon all other parties at the time such papers are filed with the clerk.

**LR 7.22 LR 7.22 Exhibits and Other Documents Supporting Post-trial Motions.**

When allegations of fact not of record are relied upon in support of a motion, all pertinent affidavits, transcripts of depositions, and other documents must be filed simultaneously with the motion whenever practicable. In any event, such supporting documents must be filed within fifteen (15) days after the motion has been filed, unless otherwise ordered by the court. Affidavits in support of a motion for new trial shall be served with the motion as required by Fed.R.Civ.P.59(c). All other supporting exhibits and documents shall be filed and identified in the manner required by LR 5.1 (f).

**LR 7.23 Grounds for New Trial.**

A motion for a new trial must state with particularity any trial errors alleged as grounds for a new trial.

**LR 7.24 Decision Without Transcript of Testimony.**

Unless for good cause shown the court orders otherwise, a post-trial motion may be decided without the transcript of testimony.

**LR 7.30 Post-trial Briefs of Moving Party.**

An original and two (2) copies of the brief of the moving party shall be filed within thirty (30) days after the filing of the motion, unless upon motion and for good cause shown the court directs otherwise. Unless otherwise ordered by the court, if supporting legal briefs are not filed within the time provided in this rule, such motion shall be deemed to be withdrawn.

**LR 7.31 Post-trial Briefs of Respondent.**

An original and two (2) copies of the brief of the respondent shall be filed within twenty (20) days after service of the brief of the moving party. Unless otherwise ordered by the court, if a responsive legal brief is not filed within the time provided in this rule, the respondent shall be deemed not to oppose such motion.

**LR 7.32 Post-trial Reply Briefs.**

The moving party may file an original and two (2) copies of a reply brief within ten (10)

days after service of the brief of the respondent. No further briefs may be filed without leave of court.

**LR 7.33 Conformity to Pretrial Procedure.**

The procedure provided in Local Rule 7.9 shall be applicable to post-trial motions, and the content and length of briefs shall be governed by the provisions of Local Rules 7.8.

**LR 7.34 After-discovered Evidence.**

A motion for a new trial on the ground of after-discovered evidence shall, in addition to all other requirements, be accompanied by the affidavits of the witnesses relied upon, stating the substance of their testimony and the reasons why it could not have been introduced at trial.

**LR 7.35 Notice of Appeal to Trial Judge.**

Upon the filing of any appeal from any judgment, order or decree of this court, notice thereof shall be given promptly to the judge who entered the same.

**LR 8.1 Statement of Amount of Damages.**

The demand for judgment required in any pleading in any civil action pursuant to Fed.R.Civ.P.8(a)(3) may set forth generally that the party claiming damages is entitled to monetary relief but shall not claim any specific sum where unliquidated damages are involved. The short plain statement of jurisdiction, required by Fed.R.Civ.P.8(a)(1), shall set forth any amounts needed to invoke the jurisdiction of the court but no other.

**LR 8.2 Claims for Unliquidated Damages.**

Whenever an amount or amounts claimed in an action has become relevant for any purpose in the action, the party making the demand shall file a statement with the court setting forth the amount or amounts of such demand or the maximum or minimum amount claimed.

**LR 14.1 Motion to Join Third Parties Under Fed.R.Civ.P.14(a), Time for.**

A motion by a defendant for leave to join a third-party defendant under Fed.R.Civ.P.14(a) shall be made within three (3) months after an order has been entered setting the case for trial, or within six (6) months after the date of service of the moving defendant's answer to the complaint, whichever shall first occur.

**LR 14.2 Motion to Join Third Parties Under Fed.R.Civ.P.14(b), Time for.**

A motion by a plaintiff for leave to join a third-party defendant under Fed.R.Civ.P.14(b) shall be made within three (3) months after an order has been entered setting the case for trial, or within six (6) months after the date of service of the moving plaintiff's answer to the counterclaim, whichever shall first occur.

**LR 14.3 Motion to Join Third Parties, Time for, Suspension of Rules.**

The provisions of this rule may be suspended upon a showing of good cause.

## LR 15.1 Amended Pleadings

**(a) Original of proposed amendment to accompany the motion.**

Whenever a party files a motion requesting leave to file an amended pleading, the original of the proposed amended pleading must be retyped or reprinted so that it will be complete in itself including exhibits and shall be attached to the motion. If the motion is granted, the clerk shall forthwith detach and file the original amended pleading. Unless otherwise ordered, an amended pleading that does not add a new defendant shall be deemed to have been served for the purpose of determining the time for response under Fed. R. Civ. P. 15(a), on the date the Court grants leave for its filing. A party granted leave to amend its pleading, when the amended pleading would add a new defendant, shall file and effect service of the amended pleading within thirty (30) days after the date of the Order granting leave for its filing.

**(b) Highlighting of amendments.**

The party filing the motion requesting leave to file an amended pleading shall attach to the motion: (1) the proposed amended pleading as set forth in subsection (a) of this rule, and (2) a copy of the original pleading in which stricken material has been lined through and any new material has been inserted and underlined or set forth in bold-faced type.

## CHAPTER V

## CASE MANAGEMENT AND PRETRIAL CONFERENCES

### LR 16.1 Requirement of Holding Court Conferences.

Unless otherwise ordered by the court, there shall be a minimum of two (2) court conferences in every civil action: an initial case management conference and a final pretrial conference. Health and Human Services cases (Social Security Appeals), prisoner, *pro se* parties and U.S. Government loan cases are exempted from the requirement of holding said conferences unless otherwise ordered by the court.

### LR 16.2 Court Conferences, Participants at.

At least one attorney for each of the parties who is a member of the bar of this court shall appear at and participate in each conference, except in the case of attorneys admitted to practice in such case under Local Rule 83.9.1, .2, .3, or .4. At least one attorney for each of the parties who is fully familiar with the case and who has complete authority to settle the case shall appear for each party. If any attorney does not have complete settlement authority, the party or a person with full settlement authority shall accompany the attorney to each conference and trial, or upon approval of court, be available by telephone during each conference and trial. Parties may be required to participate at any conference at the discretion of the court. If settlement requires approval of a committee of an insurance carrier, all of the members of such committee, or a majority thereof, if such majority is empowered to act, shall be reasonably available by telephone. Counsel must notify the person, or committee with settlement authority, of the requirements of this rule, as well as the dates of each conference and trial.

### LR 16.3 Conferences of Attorneys.

(a) In each civil action, lead counsel for each party shall confer at least ten (10) days prior to the initial case management conference to consider the matters set forth on the court's case management form, as set forth in Appendix A to these rules, and shall thereafter file a concise joint case management statement consisting of the completed case management form. It shall be the duty of the plaintiff to take the initiative in holding such a conference and in assuring the completion and filing of the joint case management plan form. The filing of this form satisfies the requirement of a proposed discovery plan under Fed.R.Civ.P. 26(f). The joint case management form shall be filed five (5) days prior to the case management conference. The information in the case management form will not be deemed an admission by any party. Health and Human Services cases (Social Security Appeals), prisoner, *pro se* parties and U.S. Government loan cases are exempted from the requirements of this rule.

(b) At least ten (10) calendar days prior to the final pretrial conference, lead counsel for each of the parties shall meet and confer for the purpose of attempting to enter into agreements with respect to the subjects referred to in Fed.R.Civ.P.16 and to discuss settlement of the action. It shall be the duty of the plaintiff to take the initiative in holding such a conference and initiating discussion concerning settlement and to report to the court at the final pretrial conference the

results of efforts to arrive at settlement. At the conference all exhibits which any party intends to introduce at trial whether on the case in chief or in rebuttal shall be examined, numbered and listed. Only exhibits so listed shall be offered in evidence at the trial, except for good cause shown. Counsel shall attempt in good faith to agree as to the authenticity and admissibility of such exhibits insofar as possible and note an objection to any not so agreed upon. Counsel shall attempt in good faith to agree insofar as possible upon a comprehensive written statement of all undisputed facts which statement shall be included in plaintiff's pretrial memorandum. Lists of potential witnesses with their addresses shall be exchanged.

### LR 16.4 Scheduling Conferences.

The court shall issue a scheduling order within one hundred and twenty (120) days after service of the complaint after consulting with counsel and any *pro se* litigants by conference, telephone, mail, or any other suitable means. Inasmuch as no Health and Human Services cases (Social Security Appeals) ever reach the trial stage and relatively few prisoner and U.S. Government loan cases reach that stage, such cases are exempted from the mandatory case management conference and scheduling order requirements.

### LR 16.5 Special Pretrial Orders.

The judge to whom any action is assigned may make special pretrial orders governing such action.

### LR 16.6 Pretrial Memorandum.

Each party to a civil action shall file a pretrial memorandum and serve a copy on all other parties, at least **five (5)** days prior to the final pretrial conference, containing the information requested, and in the form set forth in Appendix B to these rules. The instructions contained in said official form of pretrial memorandum are a part of these rules.

## CHAPTER VI

## ALTERNATIVE DISPUTE RESOLUTION

### LR 16.7 Alternative Dispute Resolution.

Litigants in all civil cases shall consider the use of an alternative dispute resolution process at an appropriate stage in the litigation. A judge may in his or her discretion set a civil case for an alternative method of dispute resolution approved by the court's Civil Justice Reform Act Expense and Delay Reduction Plan: the Mediation Program, the Settlement Officer Program, or the Summary Jury Trial Program; provided, however, that he or she gives consideration to any reasons advanced by the parties as to why such particular alternative method of dispute resolution would not be in the best interests of justice.

### LR 16.8 Court-Annexed Mediation Program.

#### LR 16.8.1 General Rule.

The court adopts this rule for the purpose of implementing a court-annexed mediation program to provide litigants with an alternative method to dispose of their case. As hereinafter provided, commencing January 1, 1994 (and continuing until further action by the court) each judicial officer of this court may refer civil actions to mediation.

#### LR 16.8.2 Certification of Mediators.

(a) The chief judge shall certify as many mediators as determined to be necessary under this rule.

(b) An individual may be certified at the discretion of the chief judge as a mediator if: (1) he or she has been a member of the bar of the highest court of a state or the District of Columbia for a minimum of ten (10) years; (2) he or she has been admitted to practice before this court; and (3) he or she has been determined by the chief judge to be competent to perform the duties of a mediator; and (4) he or she has successfully completed the mediation training program established by the Middle District. The training requirement may be waived by the chief judge when the qualifications and experience of the applicant are deemed sufficient.

(c) The court shall solicit qualified individuals to serve as mediators.

(d) Each individual certified as a mediator shall take the oath or affirmation prescribed by 28 U.S.C. § 453 before serving as a mediator.

(e) A list of all persons certified as mediators shall be maintained in the office of the clerk.

(f) A member of the bar certified as a mediator may be removed from the list of certified mediators by the chief judge.

#### LR 16.8.3 Compensation and Expenses of Mediators.

The services of the mediator shall be provided *pro bono*. An individual certified as a mediator shall not be called upon more than twice in a calendar year to serve as a mediator

without prior approval of the mediator.

**LR 16.8.4 Cases Eligible for Mediation.**

Every civil action filed in the Middle District of Pennsylvania is eligible for mediation except any case which the assigned judge determines, after application by any party or by the mediator, is not suitable for mediation.

**LR 16.8.5 Scheduling Mediation Conference.**

(a) When the court makes a determination that referral to mediation is appropriate, it shall issue an order referring the case to mediation, appointing the mediator, directing the mediator to establish the date, time and place for the mediation session and setting forth the name, address, and telephone number of the mediator. The order will also direct the mediator to fix the date for the initial mediation session to be a date within thirty (30) days from the date of the order of referral.

(b) The mediation session shall be held before a mediator selected by the assigned judge from the list of mediators certified by the chief judge.

(c) Upon mailing the order of referral, the clerk shall send to the mediator a current docket sheet. The mediator shall advise the clerk as to which documents in the case file the mediator desires copies of for the mediation session. The clerk shall provide the mediator with all requested copies.

(d) Any continuance of the mediation session beyond the thirty (30) day period from the date of the referral order must be approved by the assigned judge.

(e) A person selected as a mediator shall be disqualified for bias or prejudice as provided by 28 U.S.C. § 144, and shall disqualify himself or herself in any action where disqualification would be required under 28 U.S.C. § 455 if he or she were a justice, judge, or magistrate judge. A party may assert the bias or prejudice of an assigned mediator by filing an affidavit with the assigned judge stating that the mediator has a personal bias or prejudice. The judge may in his or her discretion end alternative dispute resolution efforts, refer the case to another mediator, refer the case back to the already selected mediator or initiate another alternative dispute resolution mechanism.

**LR 16.8.6 The Mediation Session.**

(a) The mediation session shall take place on the date and at the time set forth in the order. The mediation session shall take place in a neutral setting as designated by the mediator. The parties shall not contact or forward documents to the mediator unless the mediator requests the information.

(b) Counsel primarily responsible for the case and any unrepresented party shall attend the mediation session. All parties or principals of parties with decision making authority must attend the mediation session, unless attendance is excused by the mediator for good cause shown, and then shall be available by phone and be prepared to discuss: (1) all liability issues; (2) all damages issues; (3) all equitable and declaratory remedies if such are requested; and (4) the position of the parties relative to settlement. Counsel shall make arrangements with the client to be available by telephone or in person for the purpose of discussing settlement possibilities. Parties may be required to participate during the mediation session at the discretion of the

mediator. Willful failure to attend the mediation conference shall be reported to the court and may result in the imposition of sanctions.

(c) No proceeding at any mediation session authorized by this rule (including any statement made or written submissions provided by a party, attorney, or other participant) shall be disclosed to any person not involved in the mediation process, unless otherwise stipulated in writing by all parties and the mediator. None of the proceedings shall be used by any adverse party for any reason in the litigation at issue.

(d) In the event the mediator determines that no settlement is likely to result from the mediation session, the mediator shall terminate the session and promptly thereafter send a report to the judge to whom the case is assigned stating that there has been compliance with the requirements of this rule, but that no settlement has been reached. In the event that a settlement is achieved at the mediation session, the mediator shall send a written report to the judge to whom the case is assigned stating that a settlement has been achieved.

(e) No one shall have a recording or transcript made of the mediation session, including the mediator.

(f) The mediator shall not be called to testify as to what transpired in the mediation session.

## LR 16.9 Settlement Officer Program.

### LR 16.9.1 General Rule.

Any time after an action or proceeding has been filed, the action may be referred to another judicial officer, including a magistrate judge, or to a neutral evaluator for the purpose of conducting a settlement conference(s).

### LR 16.9.2 Agreement of the Parties.

The parties may agree, with the approval of the court, upon the selection of the settlement officer.

### LR 16.9.3 Discretion of the Court.

Notwithstanding any other provision of this rule, in all actions the court shall have the right to designate the settlement officer and make the referral.

### LR 16.9.4 Participants and Settlement Authority.

(a) At least one attorney for each party who is a member of the bar of this court shall appear at the settlement conference, except in the case of attorneys admitted to practice in such cases under Local Rule 83.9.1, .2, .3, or .4. Any party appearing in a case *pro se* shall attend the settlement conference. At least one attorney for each party who is fully familiar with the case and has complete authority to settle the case shall appear for each party. If any attorney does not have complete settlement authority, the party or a person with full settlement authority shall accompany the attorney or shall be available by telephone. Parties may be required to attend and participate during the settlement session at the discretion of the settlement officer.

(b) No proceeding at any settlement conference authorized by this rule (including any statement made or written submissions provided by a party, attorney, or other participant) shall be disclosed to any person not involved in the settlement conference, unless otherwise stipulated

in writing by all parties and the settlement officer. None of the proceedings shall be used by any adverse party for any reason in the litigation at issue.

**LR 16.9.5 Fees.**

No fees shall be assessed to any party for the costs of the settlement officer program. If a neutral evaluator is the settlement officer, the services of the neutral evaluator shall be provided *pro bono* to the court unless other arrangements have been approved by all parties and the assigned judge prior to appointing the neutral evaluator to the case.

## CHAPTER VII

## CLASS ACTIONS

### LR 23.1 Class Actions, Form of Designation of Complaint.

The complaint shall bear next to its caption the legend, "Complaint--Class Action."

### LR 23.2 Class Actions, Contents of Complaints.

The complaint shall contain under a separate heading, styled "Class Action Allegations":

(a) A reference to the portion or portions of Fed.R.Civ.P.23 under which it is claimed that the suit is properly maintainable as a class action.

(b) Appropriate allegations thought to justify such claim, including, but not necessarily limited to:

(1) The size (or approximate size) and definition of the alleged class,

(2) The basis upon which the plaintiff (or plaintiffs) claims

(A) To be an adequate representative of the class, or

(B) If the class is comprised of defendants, that those named as parties are adequate representatives of the class,

(3) The alleged questions of law and fact claimed to be common to the class, and

(4) In actions claimed to be maintainable as class actions under subdivision (b)(3) of Fed.R.Civ.P.23, allegations thought to support the finding required by that subdivision.

### LR 23.3 Class Action Determination.

Within ninety (90) days after filing of a complaint in a class action, unless this period is extended on motion for good cause appearing, the plaintiff shall move for a determination under subdivision (c)(1) of Fed.R.Civ.P.23, as to whether the case is to be maintained as a class action. In ruling upon such a motion, the court may allow the action to be so maintained, may disallow and strike the class action allegations, or may order postponement of the determination pending discovery or such other preliminary procedures as appear to be appropriate and necessary in the circumstances. Whenever possible, where it is held that the determination should be postponed, a date will be fixed by the court for renewal of the motion before the same judge.

### LR 24.1 Notification of Claim of Unconstitutionality.

For local rule on notification requirements in actions raising a claim of unconstitutionality, see LR 4.5.

## CHAPTER VIII

## DEPOSITIONS AND DISCOVERY

### LR 26.1 (Reserved)

### LR 26.2 Service and Filing of Discovery Material.

For local rule on service and filing of discovery material, see LR 5.4.

### LR 26.3 Discovery Motions, Statement of Conference to Resolve Objections.

Counsel for movant in all discovery motions shall file with the motion a statement certifying that counsel has conferred with counsel for the opposing party in a good faith effort to resolve by agreement the issues raised by the motion without the intervention of the court, together with a detailed explanation why such agreement could not be reached. If part of the issues raised by the motion have been resolved by agreement, the statement shall specify the issues so resolved and the issues remaining unresolved.

### LR 26.4 Discovery Proceedings, Closing of.

In the absence of a discovery deadline set forth in a court order, each party to a civil action shall complete all discovery proceedings within six (6) months of the date of the last pleading filed by that party. The word "pleading" shall have the same meaning in this rule as in Fed.R.Civ.P.7(a). After the expiration of the discovery deadline, the parties are deemed ready for trial.

### LR 30.1 (Reserved)

### LR 30.2 Videotape Depositions, General Authority and Rules Governing.

Any deposition to be taken upon oral deposition may be recorded by videotape. Except as otherwise provided by this rule, all other rules governing the practice and procedure in depositions and discovery shall apply.

### LR 30.3 Videotape Depositions, Subpoena and Notices of.

Every notice or subpoena for the taking of a videotape deposition shall state that it is to be videotaped, the name and address of the person whose deposition is to be taken, the name and address of the person before whom it is to be taken, and the name and address of the videotape operator and the operator's employer. The operator may be an employee of the attorney taking the deposition.

### LR 30.4 Videotape Depositions, Transcript.

A stenographic transcript of the deposition shall not be required, unless, upon motion of any party, or *sua sponte*, the court so directs, and apportions the cost of same among the parties as

appropriate. Any party may elect to provide a transcript at his or her expense, in which event copies shall be made available to all other counsel at cost.

**LR 30.5 Videotape Depositions, Procedure.**

The deposition shall begin by the operator stating on camera (1) the operator's name and address, (2) the name and address of the operator's employer, (3) the date, time and place of the deposition, (4) the caption of the case, (5) the name of the witness, and (6) the party on whose behalf the deposition is being taken. The officer before whom the deposition is taken shall then identify himself or herself and swear the witness on camera. At the conclusion of the deposition the operator shall state on camera that the deposition is concluded. When the length of the deposition requires the use of more than one tape, the end of each and the beginning of each succeeding tape shall be announced on camera by the operator.

**LR 30.6 Videotape Depositions, Timing.**

The deposition shall be timed by a digital clock on camera which shall show continually each hour, minute and second of each tape of the deposition.

**LR 30.7 Videotape Depositions, Signature.**

No signature of the witness will be required, unless the transcript is prepared pursuant to Local Rule 30.4.

**LR 30.8 Videotape Depositions, Custody and Copies.**

The attorney for the party taking the deposition shall take custody and be responsible for the safeguarding of the videotape and shall permit the viewing of and shall provide a copy of the videotape or the audio portion thereof upon the request and at the cost of a party.

**LR 30.9 Videotape Depositions, Use.**

A videotape deposition may be used to the same extent and in the same manner as an oral deposition under Fed.R.Civ.P.32.

**LR 30.10 Depositions, Certificate of Conference to Remove Objections.**

If an oral or videotape deposition is to be used at trial, counsel for the party who intends to introduce such deposition shall file a certificate with the court at the final pretrial conference stipulating that the attorney has conferred with counsel for the opposing party in an effort to eliminate irrelevancies, side comments, resolved objections, and other matters not necessary for consideration by the trier of fact. It shall be the duty of counsel to make good faith efforts to remove such portions of such depositions prior to trial. If a videotape transcript is not available, counsel shall preview the videotape in order to comply with this rule. If the court finds that any counsel failed in good faith to seek to remove such portions, the court may make such order as is just, including an order that the entire deposition be read against a party, or that the entire deposition be excluded.

**LR 30.11 Videotape Depositions, Transcription, Marking as Exhibit, Custody and Return.**

At a trial or hearing that part of the audio portion of a videotape deposition which is offered in evidence and admitted, or which is excluded on objection, shall be transcribed in the same manner as the testimony of other witnesses, unless a transcript is prepared pursuant to Local Rule 30.4, in which event the transcript shall be received in evidence and shall constitute the record of the testimony. The videotape shall be marked as an exhibit and shall remain in the custody of the court, and shall be returned to the party filing it within six (6) months after the case has been terminated.

**LR 30.12 Videotape Depositions, Expenses and Counsel Fees.**

At any oral deposition taken outside this district, including a videotape deposition, a party may apply to the court for an order requiring the party requesting the deposition to pay the opposing party reasonable expenses and counsel fees incident thereto, which may be granted or denied in the discretion of the court.

**LR 33.1 Interrogatories and Answers or Objections, Form of Service.**

When interrogatories are served upon another party pursuant to Fed.R.Civ.P.33, the original and two (2) copies thereof shall be served upon the party who is to answer such interrogatories. Interrogatories shall be prepared in such fashion that sufficient space is provided immediately after each interrogatory or subsection thereof for insertion of the answer or objection and supporting reasons for the objection. If there is insufficient space to answer or object to an interrogatory, the remainder of the answer or objection shall follow on a supplemental sheet. The answers shall be under oath.

**LR 33.2 Interrogatories, Supplemental Answers to.**

Upon discovery by any party of information which renders that party's prior answers to interrogatories substantially inaccurate, incomplete or untrue, such party shall serve appropriate supplemental answers with reasonable promptness on all counsel or parties.

**LR 33.3 Interrogatories, Number of.**

Interrogatories to a party, as a matter of right, shall not exceed twenty five (25) in number. Interrogatories inquiring as to the names and locations of witnesses, or the existence, location and custodian of documents or physical evidence each shall be construed as one interrogatory. All other interrogatories, including subdivisions of one numbered interrogatory, shall be construed as separate interrogatories. If counsel for a party believes that more than twenty five (25) interrogatories are necessary, counsel shall consult with opposing counsel promptly and attempt to reach a written stipulation as to a reasonable number of additional interrogatories. Counsel are expected to comply with this requirement in good faith. In the event a written stipulation cannot be agreed upon, the party seeking to submit additional interrogatories shall file a motion with the court showing the necessity for relief.

**LR 36.1 Requests for Admission, Number of.**

Requests for admissions to a party, as a matter of right, shall not exceed twenty five (25) in number. All requests for admissions, including subdivisions of one numbered request for admission, shall be construed as separate requests for admissions. If counsel for a party believes that more than twenty five (25) requests for admissions are necessary, counsel shall consult with opposing counsel promptly and attempt to reach a written stipulation as to a reasonable number of additional requests for admissions. Counsel are expected to comply with this requirement in good faith. In the event a written stipulation cannot be agreed upon, the party seeking to submit additional requests for admissions shall file a motion with the court showing the necessity for relief.

**LR 36.2 Requests for Admissions, Form of Objections to.**

Objections to requests for admissions pursuant to Fed.R.Civ.P.36 shall identify and quote verbatim each request for admission to which objection is made and the supporting reasons for the objection.

**LR 37.1 Discovery Abuse, Sanctions for.**

In addition to the application of those sanctions specified in Local Rule 83.3, the court may impose upon any party or counsel such sanctions as may be just, including the payment of reasonable expenses and attorney's fees, if any party or attorney abuses the discovery process in seeking, making or resisting discovery. In an appropriate case, the court may, in addition to other remedies, notify the Attorney General of the United States in a public writing that the United States, through its officers or attorneys, has failed without good cause to cooperate in discovery or has otherwise abused the discovery process.

## CHAPTER IX

## TRIALS

**LR 39.1 Civil Trials, One Attorney for Each Party.**

Unless the trial judge shall otherwise grant leave, only one attorney may open or sum up for any party.

**LR 39.2 Civil Trials, Order of Addresses.**

Counsel for the party having the affirmative of the issue on the pleadings shall open the case and shall be immediately followed by opposing counsel, and by third parties, each of whom shall succinctly state without argument their various positions and contentions, and recite briefly the evidence intended to be introduced in support of the same.

**LR 39.3 Civil Trials, General Order of Summation**.

At the conclusion of the evidence, counsel who opened the case shall first address the jury and be followed by counsel for the opposite party, and by third parties. Counsel making the first address shall have the right to reply, restricting the reply to rebuttal without assertion of any new grounds or repetition of arguments previously made.

**LR 39.4 Civil Trials, Order of Summation in Third-Party Action.**

In actions which involve a third-party action and if evidence has been presented by each party, the plaintiff's attorney shall first sum up as in Local Rule 39.3. Defendant's attorney shall next sum up for defendant as in Local Rule 39.3 and, for defendant as third-party plaintiff, shall state explicitly upon what he or she relies against the third-party defendant. The attorney for the third-party defendant shall next sum up as the nature of his or her third-party defense may require. The attorney for third-party plaintiff may then reply in rebuttal and thereafter the attorney for the original plaintiff may reply in rebuttal only of original defendant.

**LR 39.5 Civil Trials, Other Multi-Party Actions.**

In other multi-party actions the order of summation shall be determined by the trial judge.

**LR 39.6 Civil Trials, Order of Addresses in Co-Party Cases.**

In actions involving more than one plaintiff, defendant, or third-party defendant, if the attorneys are unable to agree, the trial judge shall determine the order of speaking.

**LR 39.7 Civil Trials, Trial Briefs.**

No later than three (3) days before trial, counsel shall file a trial brief and serve copies on all opposing counsel. The trial brief shall contain a succinct statement of the evidence to be presented and the position of the party filing the same with respect to anticipated legal issues, and the legal authorities relied upon to support the same. A trial brief shall conform to the

requirements of Local Rule 7.8 as to content and length. Exhibits to a brief shall not be attached to or bound with the brief but shall be bound separately.

**LR 41.1 Dismissal of Action.**

Any action may be dismissed by the court at any time no proceedings appear to have been taken for one full calendar year. At least thirty (30) days written notice of such intended dismissal shall be given to all parties by the judge to whom such action is assigned, or by the clerk, and the action shall thereafter be dismissed, unless for good cause it shall be shown that the action should not be dismissed. Dismissal under this rule shall be in addition to and not in lieu of action which may be taken under Fed.R.Civ.P.41.

**LR 42.1 Civil Trials, Order of Proof and Bifurcation.**

The court may compel the plaintiff in any action to produce all evidence upon the question of the defendant's liability before any witness is called to testify solely to the extent of the injury or damages. The defendant's attorney may then move for a judgement as a matter of law. If the motion is refused, the trial shall proceed. The court may, however, allow witnesses to be called out of order. The court may order that the issues of liability and damages be bifurcated and that separate trials be held on each issue. Separate issues of liability or damages may be further subdivided for separate trials.

**LR 43.1 Civil Trials, Attorney as Witness.**

If an attorney for any party becomes a witness on behalf of a client and gives evidence upon the merits of the case the attorney shall forthwith withdraw as trial counsel unless, upon motion, permitted to remain as trial counsel by the court.

**LR 43.2 Civil Trials, Number of Attorneys to Examine Witness.**

On the trial of an issue of fact, only one attorney on either side shall examine or cross-examine any witness, unless otherwise permitted by the court.

**LR 43.3 Civil Trials, Offers of Proof.**

The party calling a witness, when required by the court, shall state briefly what is proposed to be proved by the testimony and the legal purpose of it.

**LR 43.10 Special Trial Orders--Witnesses, Attorneys, Public Attendance, Number and Length of Addresses.**

Subject to the requirements of due process of law and of the constitutional rights of the parties, a trial judge may make an order in any case covering any of the following matters:

**Limitation of Witnesses.**

Limiting the number of witnesses whose testimony is similar or cumulative;

**Limitation of Witness Interrogation.**

Limiting the time to be spent on the direct examination or the cross examination of a witness or of a party's overall examination and cross examination of witnesses;

**Limitation of Attorneys.**

Limiting the number of attorneys representing the same party or the same group of parties, who may actively participate in the trial of the case or the examination of witnesses;

**Number and Length of Addresses.**

Regulating the number and length of addresses to the jury or to the court;

**Regulating and Excluding Public Attendance.**

Regulating or excluding the public or persons having no interest in the proceedings, whenever the court deems such order of exclusion to be in the interest of the public good, order or morals.

**LR 43.20 Civil Trials, View.**

A party desiring to have the jury view any premises involved in the litigation, may make application therefor either prior to the listing of the case for trial, or at the bar during the actual trial of the case. In all such cases, the allowance of the application shall be within the discretion of the court, which may impose upon the applicant such reasonable costs or expenses as may be involved in connection with such view, or may direct that any costs thereby incurred shall follow the judgment entered in such action as in other cases.

**LR 48.1 Civil Trials, Juries.**

Juries in civil cases shall consist, initially, of at least eight (8) members. Trials in such cases shall continue so long as at least six (6) jurors remain in service. If the number of jurors falls below six (6), a mistrial shall be declared upon prompt application therefor by any party then on the record unless the parties stipulate that the number of jurors may fall below six (6).

**LR 48.2 Civil Trials, Trial Without A Jury.**

In a civil action tried without a jury, counsel shall file requests for findings of fact and conclusions of law with the pretrial memorandum. Additional requests may be made during the trial as to matters that could not have been reasonably anticipated before trial.

**LR 51.1 Civil Trials, Requests to Instruct the Jury.**

Requests to instruct the jury shall not exceed twelve (12) in number without leave of court. Each shall be a single request, on a separate numbered page, indicating the party making the request, and framed so that it can be either affirmed or denied. It shall cite the authority upon which it is based. When the authority relied upon is case law, the reference shall include the page(s) of the decision containing the point being proposed as well as the case citation. The original and two (2) copies shall be filed and served no later than three (3) days before trial. Such requests may be supplemented for matters arising during the trial that could not have been reasonably anticipated before trial.

## CHAPTER X

## JUDGMENT

### LR 54.1 Judgment by Confession.

Judgment may be entered on a confession of judgment or a warrant of attorney to confess judgment, in accordance with the practice in effect in the courts of the Commonwealth of Pennsylvania, providing the requisites of federal jurisdiction are set forth in the papers filed in connection with the entry of judgment. The caption of all papers filed in connection with confession of judgment cases subsequent to the complaint shall include the phrase "Confession of Judgment" directly below the assigned judge's name.

### LR 54.2 Security for Costs.

In any action in which the plaintiff was not a resident of the Middle District of Pennsylvania at the time suit was brought, or, having been so afterwards removed from this district, the court may enter an order for security for costs upon application and notice. If the party or parties fail to post security as fixed by the court, a judgment of dismissal may be entered upon motion.

### LR 54.3 Bills of Costs.

Bills of costs, unless an extension is granted, shall be filed no later than thirty (30) days after entry of final judgment. All bills of costs requiring taxation shall be taxed by the clerk, subject to an appeal to the court. Any party appellant shall, within five (5) days after notice of such taxation, file a written specification of the items objected to and the grounds of objection. A copy of the specifications and objections shall be served on the opposite party or that party's attorney within five (5) days. An appeal shall be dismissed for non-compliance with the appeal requirements.

### LR 54.4 Taxation of Costs.

Costs shall be taxed in conformity with the provisions of 28 U.S.C. §§ 1920 - 1923 and such other provisions of law as may be applicable and such directives as the court may from time to time issue. Taxable items include:

**(1) Clerk's Fees and Service Fees**. Clerk's fees (see 28 U.S.C. § 1920) and service fees are allowable by statute. Fees required to remove a case from the state court to federal court are allowed as follows: fees paid to clerk of state court; fees for services of process in state court; costs of documents attached as exhibits to documents necessarily filed in state court, and fees for witnesses attending depositions before removal.

**(2) Trial Transcripts**. The cost of the originals of a trial transcript, a daily transcript and of a transcript of matters prior or subsequent to trial, furnished to the court is taxable at the rate authorized by the Judicial Conference when either requested by the court, or prepared pursuant to stipulation. Mere acceptance by the court does not constitute a request. Copies of transcripts for counsel's own use are not taxable in the absence of a special order of the court.

**(3) Deposition Costs**. The reporter's charge for the original deposition and/or a copy is taxable whether or not the same is actually received into evidence, and whether or not it is taken

solely for discovery, regardless of which party took the deposition. Additional copies are not taxable. The reasonable expenses of the deposition reporter, and the notary, or other official presiding at the taking of the depositions are taxable, including travel and subsistence. Expenses incurred in taking a deposition are not taxable. Fees for the witness at the taking of a deposition are taxable at the same rate as for attendance at trial. The witness need not be under subpoena. A reasonable fee for a necessary interpreter at the taking of a deposition is taxable.

**(4) Witness Fees, Mileage and Subsistence**. The rate for witness fees, mileage and subsistence are fixed by statute (see 28 U.S.C. § 1821). Such fees are taxable even though the witness does not take the stand provided the witness necessarily attends the court. Such fees are taxable even though the witness attends voluntarily upon request and is not under subpoena. The mileage taxation is that which is traveled based on the most direct route. Mileage fees for travel outside the district shall not exceed 100 miles each way without prior court approval. Witness fees and subsistence are taxable only for the reasonable period during which the witness is within the district. No party shall receive witness fees for testifying in his or her own behalf but this shall not apply where a party is subpoenaed to attend court by the opposing party. Witness fees for officers of a corporation are taxable if the officers are not defendants and recovery is not sought against the officers individually. Fees for expert witnesses are not taxable in a greater amount than that statutorily allowable for ordinary witnesses. Allowance of fees for a witness on deposition shall not depend on whether or not the deposition is admitted into evidence.

**(5) Exemplification and Copies of Papers**. The cost of an exhibit necessarily attached to a document (or made part of a deposition transcript) required to be filed and served is taxable. The cost of copies submitted in lieu of originals because of the convenience of offering counsel or client are not taxable. The cost of reproducing copies of motions, pleadings, notices and other routine case papers is not taxable. The cost of reproducing the required number of copies of the clerk's record on appeal is allowable.

**(6) Maps, Charts, Models, Photographs, Summaries, Computations and Statistical Summaries**. The cost of maps and charts are taxable if they are admitted into evidence. The cost of photographs 8" by 10" in size or less, are taxable if admitted into evidence, or attached to documents required to be filed and served on opposing counsel. Enlargements greater then 8" by 10" are not taxable except by order of the court. The cost of models is not taxable except by order of the court. The cost of compiling summaries, computations and statistical comparisons is not taxable.

**(7) Interpreter Fees**. The reasonable fee of a competent interpreter is taxable if the fee of the witness involved is taxable. The reasonable fee of a competent translator is taxable if the document translated is necessarily filed, or admitted in evidence.

**(8) Docket Fees**. Docket fees and costs of briefs are taxable pursuant to 28 U.S.C. § 1923.

**(9)** Other items may be taxed with prior court approval.

**(10)** The certificate of counsel required by 28 U.S.C. § 1924 and the local rules shall be prima facie evidence of the facts recited therein. The burden is on the opposing party to establish that a claim is incorrectly stated, unnecessary or unreasonable.

**LR 54.5 Notice of Taxation of Costs.**

Any party requesting taxation of costs by the clerk shall give the clerk and all other parties five

(5) days written notice of such request. The clerk shall fix the time for taxation and notify the parties or their counsel.

### LR 54.6 Payment of Clerk's or Marshal's Costs.

The clerk shall not enter an order of dismissal or of satisfaction of judgment until the clerk's and marshal's costs have been paid. The clerk, in cases settled by parties without payment of costs, may have an order on one or more of the parties to pay the costs. Upon failure to pay costs within ten (10) days, or at such time as the court may otherwise direct, the clerk may issue execution for recovery of costs.

### LR 54.7 Witness Fees, Costs, Etc.

The fees and mileage of witnesses shall be paid by the party on whose behalf the witness was subpoenaed, and upon the filing of proof of such payment, by affidavit filed in the case, as required by 28 U.S.C. § 1924, such costs shall be taxed and form part of the judgment in the case.

### LR 56.1 Motions for Summary Judgment.

A motion for summary judgment filed pursuant to Fed.R.Civ.P.56, shall be accompanied by a separate, short and concise statement of the material facts, in numbered paragraphs, as to which the moving party contends there is no genuine issue to be tried.

The papers opposing a motion for summary judgment shall include a separate, short and concise statement of the material facts, responding to the numbered paragraphs set forth in the statement required in the foregoing paragraph, as to which it is contended that there exists a genuine issue to be tried.

Statements of material facts in support of, or in opposition to, a motion shall include references to the parts of the record that support the statements.

All material facts set forth in the statement required to be served by the moving party will be deemed to be admitted unless controverted by the statement required to be served by the opposing party.

### LR 58.1 Marshal's Deeds.

Marshal's deeds for property sold in execution shall not be acknowledged or delivered until ten (10) days after the date of the execution sale, during which time any objections to any sale or to the right of the purchaser, as a lien creditor, to apply a lien in satisfaction of a bid shall be filed.

### LR 59.1 New Trials; Amendment of Judgments

For local rules regarding post-trial motions, see LR 7.10, et seq.

## CHAPTER XI

## PROVISIONAL AND FINAL REMEDIES

### LR 65.1 Court Officers Not to Become Bail or Security.

No attorney, clerk, marshal, bailiff or other officer of the court shall furnish bail or security in any matter in or before the court.

### LR 67.1 Investment of Registry Funds Pending Litigation.

(a) Funds regularly deposited in the registry of the court such as bail, removal bonds and civil garnishments are placed in the Treasury of the United States and accrue no interest.

(b) Counsel or parties who wish to deposit funds in pending litigation may, by leave of court, have such funds invested in interest bearing accounts, certificates of deposit or treasury bills. Any order directing investment will include the following: (1) The amount to be invested; (2) The name of the bank or financial institution at a location where the clerk has an office in which the funds are to be invested; (3) The type of account or instrument in which the funds are to be invested; (4) The terms of investment to include reinvestment instructions on short term instruments, any time limits on investment and other material information required by a particular case.

(c) Counsel or parties obtaining an order as described in paragraph (b) of this rule shall cause a copy to be served personally upon the clerk or the chief deputy and the financial deputy at the district office or on the deputy in charge at a division office.

(d) The clerk shall take all reasonable steps to deposit funds at interest within, but not more than, fifteen (15) days after having been served with a copy of the order.

(e) Counsel or parties will have the responsibility, fifteen (15) days after service of the order as provided by paragraph (c) of this rule, to verify with the clerk that the funds have been invested as ordered.

(f) Failure to personally serve as specified in paragraph (c) above, or failure to verify that the funds were actually invested as provided by part (e) of this rule shall release the clerk and deputy clerks from any liability for the loss of interest which could have been earned on the funds.

(g) A service fee may be charged by the clerk for the investment of registry funds.

## CHAPTER XII

## SPECIAL PROCEEDINGS

### LR 71A.1 Condemnation Procedures.

#### LR 71A.1.1 Formal Filing Requirements.

In condemnation proceedings, all documents presented for filing shall contain in the caption a reference to the tract number or numbers, in numerical order, to which the document refers, and the name of the owner, owners, reputed owner, or reputed owners, as the case may be. All correspondence from counsel to the court or the clerk shall bear a similar notation immediately preceding the salutation.

#### LR 71A.1.2 Separate Files for Separate Tracts.

For each tract, economic unit or ownership for which the just compensation is required to be separately determined in a total lump sum, there shall be a separate civil action file opened by the clerk, which shall be given a serial number such as is given in all other civil actions. The condemnor's counsel shall make the initial determination of each tract, economic unit or ownership for which just compensation is required to be separately determined in a lump sum, subject to review by the court after filing.

#### LR 71A.1.3 Master File.

The file in the civil action containing the first complaint filed under a single declaration of taking shall be designated as the Master File for all the civil actions based upon the single declaration of taking. The numerical designation as the Master File shall be shown by adding as a suffix to the civil action serial number and the symbol MF_____. (In the blank shall be inserted a code number or numbers, selected by the condemnor, designating the project or projects and the number assigned the declaration of taking with which the property concerned is connected.) The single declaration of taking shall be filed in the Master File only. In all other civil actions for condemnation of property which is the subject of the declaration of taking, an appropriate reference to the Master File number in a standard form of complaint shall be deemed to incorporate in the cause the declaration of taking by reference, and shall be a sufficient filing of the declaration of taking referred to.

#### LR 71A.1.4 Separate Complaint in Master File.

For the civil action designated as the Master File there shall be a separate complaint. At the option of the condemnor this complaint and exhibits shall (1) describe all owners, and other parties affected and all properties that are the subject of the declaration of taking, or (2) describe only the owner or owners of the first property or properties in the declaration of taking for which the issue of just compensation is separately determinable.

**LR 71A.1.5 Standard Form Complaint.**

A standard form of complaint may be used for each civil action filed to condemn a tract, economic unit or ownership for which the issue of just compensation is required to be determined in a single lump sum. In the body of the complaint it shall not be necessary to designate the owner or owners of the property concerned, other parties affected by the civil action, or to describe the property concerned in the civil action. The names of the owners, and other parties affected, and the description of the property concerned in the civil action, may be set forth in an exhibit or exhibits incorporated by reference in the standard form of complaint and attached thereto.

**LR 71A.1.6 Combined Notice or Process.**

In any notice or process required or permitted by law or by the Federal Rules of Civil Procedure (including but not limited to process under Fed.R.Civ.P.71A(d)) the condemnor, at its option, may combine in a single notice or process, notice or process in as many separate civil actions as it may choose in the interests of economy and efficiency.

**LR 71A.1.7 Effect of Filing in Master File.**

The filing of a declaration of taking in the Master File constitutes a filing of the same in each of the actions to which it relates.

## CHAPTER XIII

## MAGISTRATE JUDGES

### LR 72.1 Authority of Magistrate Judges.

**(a) In General.**

Magistrate judges are judicial officers of the court. Any magistrate judge of this district may perform any duty authorized or allowed by law to be performed by a magistrate judge. Except as otherwise provided by law, rule, or order of this court, the performance of a duty by a magistrate judge shall be in accordance with such other provisions of these rules as would apply if that duty were performed by a district judge. A magistrate judge may determine any preliminary matters; require parties, attorneys, and witnesses to appear; require briefs, proofs, and argument; and conduct any hearing, conference, or other proceeding the magistrate judge deems appropriate in performing his or her duties.

**(b) Special Designation to Exercise Civil Consent Authority.**

Any magistrate judge of this district may, upon consent of the parties, conduct any or all proceedings in a civil matter and order entry of judgment in the matter. (See 28 U.S.C. § 636(c)(1))

**(c) Special Designation to Conduct Misdemeanor Trials.**

Any magistrate judge of this district may try persons accused of misdemeanor offenses and sentence persons convicted of misdemeanor offenses. (See 18 U.S.C. § 3401)

### LR 72.2 Appeals from Non-Dispositive Orders of Magistrate Judges.

Any party may appeal from a magistrate judge's order determining a non-dispositive pretrial motion or matter in any civil or criminal case in which the magistrate judge is not the presiding judge of the case, within ten (10) days after issuance of the magistrate judge's order, unless a different time is prescribed by the magistrate judge or a judge. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, a written statement of appeal which shall specifically designate the order, or part thereof, appealed from and the basis for any objection thereto. At the time the appeal is filed, the appellant shall also file a brief addressed to the issue raised by the objection to the order or part appealed from. Any party opposing the appeal shall file a responsive brief within ten (10) days after service of the appellant's brief. A brief in reply may be filed within seven (7) days after service of the opposing party's brief. A judge of the court shall consider the appeal and shall set aside any portion of the magistrate judge's order found to be clearly erroneous or contrary to law. The judge may also reconsider *sua sponte* any matter determined by a magistrate judge under this rule.

### LR 72.3 Review of Reports and Recommendations of Magistrate Judges Addressing Case Dispositive Motions.

Any party may object to a magistrate judge's proposed findings, recommendations or report addressing a motion or matter described in 28 U.S.C. § 636 (b)(1)(B) or making a

recommendation for the disposition of a prisoner case or a habeas corpus petition within ten (10) days after being served with a copy thereof. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Local Rule 72.2 shall apply. A judge shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.

**LR 72.4 Magistrate Judges, Appeal from Judgments in Misdemeanor Cases - 18 U.S.C. § 3402.**

For local rule of criminal procedure regarding Magistrate Judges, Appeal from Judgments in Misdemeanor Cases, see Section II, Chapter I, LCrR 58.1.

**LR 72.5 Magistrate Judges, Authority for Forfeiture of Collateral.**

For local rules on Magistrate Judges authority and general provisions for Forfeiture of Collateral, see Section II, Chapter I, LCrR 58.2 and LCrR 58.3.

**LR 73.1 Magistrate Judges, Special Provisions for the Disposition of Civil Cases on Consent of the Parties--28 U.S.C. § 636(c).**

**(a) Notice.**

The clerk of court shall notify the parties in all civil cases that they may consent to have a magistrate judge conduct any or all proceedings in the case and order the entry of a final judgment. Such notice shall be handed or mailed to the plaintiff or his or her representative at the time an action is filed and to other parties as attachments to copies of the complaint and summons, when served.

**(b) Execution of Consent.**

The clerk shall not accept a consent form unless it has been signed by all parties in a case. The plaintiff shall be responsible for securing the execution of a consent form by the parties and for filing such form with the clerk of court within sixty (60) days after the filing date of the case. No consent form will be made available, nor will its contents be made known to any judge or magistrate judge, unless all parties have consented to the reference to a magistrate judge. No magistrate judge, judge, or other court official may attempt to persuade or induce any party to consent to the reference of any matter to a magistrate judge. This rule, however, shall not preclude a judge or magistrate judge from informing the parties that they may have the option of referring a case to a magistrate judge.

**(c) Reference.**

After the consent form has been executed and filed, the clerk shall transmit it to the judge to whom the case has been assigned for approval and referral of the case to a magistrate judge.

Once the case has been assigned to a magistrate judge, the magistrate judge shall have the authority to conduct any and all proceedings to which the parties have consented and to direct the clerk of court to enter a final judgment in the same manner as if a judge had presided.

**(d) Cases Referred to a Magistrate Judge By Rotational Assignment.**

A civil case may be referred to a magistrate judge at the time of the filing of the complaint under the rotational assignment plan of the court and, at the same time, will be assigned to a district court judge. The magistrate judge, independent of the parties' consent, is authorized to exercise all the judicial authority that is provided for by law for a magistrate judge.

The magistrate judge may, despite the initial absence of consent to proceed before the magistrate judge, establish a deadline for a consent decision in the case management order. The parties shall be advised that they are free to withhold consent without adverse substantive consequences.

**(e) Joint Case Management Plan.**

The parties in completing the joint case management plan form before the case management conference, in all civil cases, shall state whether all parties consent to have a magistrate judge conduct all proceedings including trial and the entry of a final judgment. Upon the consent of all of the parties, the assigned district court judge may direct the clerk to reassign the case to a magistrate judge. In a case that has been referred to a magistrate judge on a rotational basis, upon a statement in the joint case management plan that the parties consent to proceed before the magistrate judge, the clerk shall reassign the case to that magistrate judge.

## CHAPTER XIV

## DISTRICT COURTS AND CLERKS

### LR 77.1 Clerk's Offices.

The clerk's office shall be at Scranton, Pennsylvania, unless otherwise directed by the court. Auxiliary clerk's offices shall be maintained at such places as designated by the court and provided by law, staffed by deputy clerks, where actions may be commenced and process issued and permanent records of the court may be maintained, with the same force and effect as if done at Scranton, Pennsylvania.

### LR 79.1 Entries in Clerk's Records.

No one other than the clerk or deputy clerks duly authorized shall make any entry in the clerk's records, unless specifically ordered to do so by the court.

### LR 79.2 Removal of Court Records.

No papers or records or things filed, entered for record or admitted into evidence in any action shall be removed from the official records of the court officers or staff except upon order of the court.

### LR 79.3 Deposits for Costs.

The clerk and the marshal may require reasonable deposits for anticipated cost from parties filing papers or requesting services.

### LR 79.4 Removal or Disposition of Exhibits.

Except for those documentary exhibits required to remain permanently with case records, attorneys are responsible, after final judgment including appeal, for removing or authorizing the clerk to dispose of document exhibits which do not fit in the regular case file. Documents of unusual bulk or weight and physical exhibits other than documents are to be removed immediately after trial and, if necessary in an appeal, attorneys must make arrangements for transport to and receipt of such exhibits at the court of appeals. If not removed or disposition authorized, upon thirty (30) days notice from the clerk, such exhibits will be destroyed or otherwise disposed of by the court.

### LR 79.5 Unsealing of Civil Cases/Documents.

Unless good cause is shown, all civil cases and/or documents in those cases which still remain under seal after the case is terminated will be unsealed by the court no later than two (2) years after the final judgment and/or the exhaustion of all appeals.

## CHAPTER XV

## GENERAL PROVISIONS

### LR 83.1 Use of Photography, Radio and Television Equipment in the Courtroom and Its Environs.

#### LR 83.1.1 Judicial Proceedings.

The taking of photographs in the courtroom or its environs, or radio or television broadcasting from the courtroom or its environs, or taping or recording in the courtroom or its environs during the progress of and in connection with judicial proceedings, including proceedings before a United States Magistrate Judge, whether or not court is actually in session, is prohibited. Environs of the courtroom shall include the entire floor on which is located any courtroom, grand jury room, marshal's office, clerk's office, or office of the United States Attorney, or any lock-up, and the corridor or lobby on the main floor or street floor constituting an entrance area to the building in which is located any elevator door for elevators leading from such entrance areas of the building to any such floor. The court may make such orders as may be necessary in connection with any specific case to protect the rights of all parties and the public.

#### LR 83.1.2 Ceremonial Proceedings.

In the discretion of any judge of this court, broadcasting, photographing, televising, or recording of investigative, naturalization, or ceremonial proceedings in a courtroom may be permitted under such conditions as the judge may prescribe.

### LR 83.2 Regulation of Discussion relating to Criminal and Civil Litigation.

#### LR 83.2.1 Release of Information by Attorneys.

It is the duty of the lawyer or law firm not to release or authorize the release of information or opinion which a reasonable person would expect to be disseminated by means of public communication, in connection with pending or imminent criminal litigation with which the attorney or the firm is associated, if there is a reasonable likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice.

#### LR 83.2.2 Extrajudicial Statements of Attorneys.

With respect to a grand jury or other pending investigation of any criminal matter, a lawyer participating in or associated with the investigation shall refrain from making any extrajudicial statement which a reasonable person would expect to be disseminated by means of public communication, that goes beyond the public record or that is not necessary to inform the public that the investigation is underway, to describe the general scope of the investigation, to obtain assistance in the apprehension of a suspect, to warn the public of any dangers, or otherwise to aid in the investigation.

**LR 83.2.3 Limitations on Information to be Released.**

From the time of arrest, issuance of an arrest warrant, or the filing of a complaint, information, or indictment in any criminal matter until the commencement of trial or disposition without trial, a lawyer or law firm associated with the prosecution or defense shall not release or authorize the release of any extrajudicial statement which a reasonable person would expect to be disseminated by means of public communication, relating to that matter and concerning:

(a) The prior criminal record (including arrests, indictments, or other charges of crime), or the character or reputation of the accused, except that the lawyer or law firm may make a factual statement of the accused's name, age, residence, occupation, and family status, and if the accused has not been apprehended, a lawyer associated with the prosecution may release any information necessary to aid in apprehension or to warn the public of any dangers the accused may present;

(b) The existence or contents of any confession, admission, or statement given by the accused, or the refusal or failure of the accused to make any statement;

(c) The performance of any examinations or tests or the accused's refusal or failure to submit to an examination or test;

(d) The identity, testimony, or credibility of prospective witnesses, except that the lawyer or law firm may announce the identity of the victim if the announcement is not otherwise prohibited by law;

(e) The possibility of a plea of guilty to the offense charged or a lesser offense;

(f) Any opinion as to the accused's guilt or innocence or as to the merits of the case or the evidence in the case.

The foregoing shall not be construed to preclude the lawyer or law firm during this period, in the proper discharge of official or professional obligations, from announcing the fact and circumstances of arrest (including time and place of arrest, resistance, pursuit, and use of weapons), the identity of the investigating and arresting officer or agency, and the length of the investigation; from making an announcement, at the time of seizure of any physical evidence other than a confession, admission or statement, which is limited to a description of the evidence seized; from disclosing the nature, substance, or text of the charge, including a brief description of the offense charged; from quoting or referring without comment to public records of the court in the case; from announcing the scheduling or result of any stage in the judicial process; from requesting assistance in obtaining evidence; or from announcing without further comment that the accused denies the charges.

**LR 83.2.4 Extrajudicial Statements during Trial.**

During the trial of any criminal matter, including the period of selection of the jury, no lawyer or law firm associated with the prosecution or defense shall give or authorize any extrajudicial statement or interview, relating to the trial or the parties or issues in the trial which a reasonable person would expect to be disseminated by means of public communication, except that the lawyer or law firm may quote from or refer without comment to public records of the court in the case.

**LR 83.2.5 Extrajudicial Statements after Trial.**

After the completion of a trial or disposition without trial of any criminal matter, and prior to the imposition of sentence, a lawyer or law firm associated with the prosecution or defense shall refrain from making or authorizing any extrajudicial statement which a reasonable person would expect to be disseminated by means of public communication if there is a reasonable likelihood that such dissemination will affect the imposition of sentence.

**LR 83.2.6 Rules Relating to Juveniles.**

Nothing in this rule is intended to preclude the formulation or application of more restrictive rules relating to the release of information about juvenile or other offenders, to preclude the holding of hearings or the lawful issuance of reports by legislative, administrative, or investigative bodies, or to preclude any lawyer from replying to public charges of misconduct.

**LR 83.2.7 Extrajudicial Statements by Attorneys in Civil Cases.**

A lawyer or law firm associated with a civil action shall not during its investigation or litigation make or participate in making an extrajudicial statement, other than a quotation from or reference to public records, which a reasonable person would expect to be disseminated by means of public communication if there is reasonable likelihood that such dissemination will interfere with a fair trial and which relates to:

(a) Evidence regarding the occurrence or transaction involved;

(b) The character, credibility, or criminal record of a party, witness, or prospective witness;

(c) The performance or results of any examinations or tests or the refusal or failure of a party to submit to such;

(d) An opinion as to the merits of the claims or defenses of a party, except as required by law or administrative rule;

(e) Any other matter reasonably likely to interfere with a fair trial of the action;

(f) Any reference to the amount demanded, offered or involved.

**LR 83.2.8 Juror Contact**

No attorney or party or anyone acting on behalf of such attorney or party shall, without express permission from the court, initiate any communication with any juror pertaining to any case in which that juror may be drawn, is participating, or has participated.

**LR 83.3 Sanctions.**

**LR 83.3.1 Sanctions in the Discretion of Court.**

In the sound discretion of any judge of this court, one or more of the following sanctions may be imposed for failure to comply with any rule or order of court:

**(a) Dismissal, Default and Preclusion Orders.**

Failure of counsel for any party to appear before the court at any case management conference or final pretrial conference or to complete the necessary preparations therefor in accordance with these rules or to be prepared for trial at the time of any scheduled date for trial,

or otherwise to comply with any of the rules contained herein, or any order of court, may be considered an abandonment or failure to prosecute or defend diligently, and an order precluding counsel from offering specific evidence or raising certain issues, or judgment, may be entered against the defaulting party either with respect to a specific issue or on the entire case.

**(b) Imposition of Costs on Attorneys.**

If counsel acts in a dilatory manner or files motions for the purpose of delay, or fails to comply with any rule or order of court, and the judge finds that the sanctions in subsection 83.3.1(a) above are inadequate or unjust to the parties in light of the facts or circumstances, the judge may, in addition to, or in lieu of, such sanctions assess reasonable costs directly against counsel whose action has obstructed the effective administration of the court's business, or suspend counsel from practicing in this court for a specified period of time not exceeding six (6) months. Any such suspension shall not be subject to Chapter XVII, Attorney Disciplinary Enforcement.

**LR 83.3.2 Failure to Exercise Reasonable Diligence In Effecting Settlement of a Case.**

Whenever the court finds that any party or lawyer in any case before the court has acted in bad faith, or has failed to exercise reasonable diligence in effecting the settlement of such case at the earliest practicable time, the court may impose upon any such party or lawyer the jury costs, including mileage and per diem, resulting therefrom. The court may, in its discretion, hold a hearing to inquire into the facts with respect thereto.

**LR 83.3.3 Additional Sanctions.**

In addition to the sanctions set forth above, the court may impose sanctions in discovery matters as set forth in Local Rule 37.1.

**LR 83.4 Release of Information by Courthouse Personnel in Criminal Cases.**

All courtroom and courthouse personnel, including but not limited to marshals, deputy marshals, court clerks and office personnel, probation officers and office personnel, and the judges' office personnel, are hereby prohibited from disclosing to any person, without authorization by the court, information relating to a pending criminal case that is not part of the public records of the court. Particularly, all such personnel shall not divulge any information concerning arguments and hearings held in chambers or otherwise outside the presence of the public.

**LR 83.5 Special Orders in Widely Publicized Cases.**

In a case which is or is likely to be widely publicized, the court, on motion of either party or on its own motion, may issue a special order governing such matters as extrajudicial statements by parties and witnesses likely to interfere with the rights of the accused to a fair trial by an impartial jury, the seating and conduct in the courtroom of spectators and news media representatives, the management and sequestration of jurors and witnesses, and any other matters which the court may deem appropriate for inclusion in such an order.

**LR 83.6 Place of Trial.**

**LR 83.6.1 General Rule.**

Every action shall be tried at the place in the district designated for the holding of court which is nearest to the residence or principal place of business of the defendant or the residence or principal place of business of the principal defendant of multiple defendants, provided that such defendant maintains a bona fide residence or place of business in this district, except that in civil actions arising out of the operation of motor vehicles or other civil actions sounding in tort, the place of trial of such cases shall be at the place for the holding of court which is nearest the scene of the principal event giving rise to the cause of action.

**LR 83.6.2 Agreement of the Parties.**

The parties may agree, with the approval of the court, upon the place of trial of any civil action in which they are interested.

**LR 83.6.3 Discretion of the Court.**

Notwithstanding any other provision of this rule, in all actions the court shall have the right to designate the place of trial for the convenience of the court or of all parties and witnesses.

**LR 83.7 Judicial Misconduct and Disability.**

Copies of the Rules of the Judicial Council of this Circuit implementing the Judicial Conduct and Disability Act, 28 U.S.C. § 372, are available from the clerk of court without charge.

## CHAPTER XVI

## ATTORNEYS

### LR 83.8 Persons Entitled to Admission as Attorneys Generally.

#### LR 83.8.1 Admission Generally.

Any person of good, moral and professional character shall be entitled to admission as an attorney of this court, provided that the person is a member of the bar of the Supreme Court of Pennsylvania, and provided that the person is a member in good standing in every jurisdiction where the person has been admitted to practice and neither has been disbarred nor is subject to pending disciplinary proceedings.

#### LR 83.8.2 Petition for Admission.

A person seeking admission under this rule shall file a petition with the court setting forth the basis for admission. The clerk of the court shall receive and maintain all legal papers submitted by persons seeking admission under this rule. The court may grant admission by oral or written order and by notifying the clerk of the court. A fee shall be charged for admission under this rule. Petition forms shall be available from the clerk.

### LR 83.9 Special Admissions of Other Persons.

#### LR 83.9.1 Attorneys for the United States.

An attorney who is a member of the bar of any United States District Court, who is a member of the bar in good standing in every jurisdiction in which the attorney has been admitted to practice, and who is not subject to pending disciplinary proceedings in any jurisdiction, shall be permitted to represent in this court the United States, an agency of the United States, or an officer of the United States when that officer is a party in the officer's official capacity.

#### LR 83.9.2 Attorneys Employed by or Associated with Organized Legal Services Programs.

An attorney who is employed by or associated with an organized legal services program (which is sponsored, approved or recognized by the local county bar association or is duly authorized by Pennsylvania Legal Services Center, Inc., and which provides legal assistance to indigents in civil matters) and is a member of the bar of the highest court in another state (including territories and the District of Columbia) shall be admitted to practice before this court in all causes in which the attorney is associated with the organized legal services program. Admission to practice under this section shall cease to be effective whenever the attorney is no longer associated with such program. Within twenty (20) days after termination of an attorney's association, a statement to that effect shall be filed with the clerk of the court by a representative of the legal services program. In no event shall admission to practice under this section remain

in effect longer than two and one-half (2-1/2) years without being renewed in accordance with the applicable procedures.

**LR 83.9.3 *Pro Hac Vice* Admission.**

An attorney who is admitted to practice in any United States District Court and the highest court of any state, and who is a member of the bar in good standing in every jurisdiction where admitted to practice, and who is not subject to pending disciplinary proceedings in any jurisdiction, may be admitted to practice by leave granted in the discretion of the court but only for the purpose of a particular case, provided also that in such cases the court in its discretion may dispense with the petition requirement in Local Rule 83.9.5, *infra*, when it deems it appropriate and in the interests of justice so to do.

**LR 83.9.4 Attorneys Appearing on Their Own Behalf.**

In special circumstances and upon petition to the court, an attorney who is not a member of the bar of the court and who does not qualify for admission under Local Rule 83.9.3 may be allowed to appear and practice before the court on his or her own behalf.

**LR 83.9.5 Procedure.**

An attorney seeking special admission under Local Rule 83.9.1, .2 or .3 of this chapter shall file a petition with the court, setting forth the basis for admission under that section. In cases where admission under Local Rule 83.9.1 or .2 is sought, the attorney shall submit a statement from a superior stating that the attorney performs duties which qualify him or her for admission under that section. The clerk of the court shall record and maintain all legal papers submitted by attorneys seeking admission under this rule. The court may grant special admission under this rule by oral or written order and by notifying the clerk of the court. A fee, to be established by Standing Order, shall be charged by the clerk for each Special Admission. Petition forms shall be available from the clerk.

**LR 83.9.6 Local Counsel and Special Admissions.**

An attorney eligible for admission under Local Rule 83.8 must either seek admission under that rule, or seek special admission in accordance with Local Rule 83.9.3 and retain an associate counsel under Local Rule 83.12, *infra*, except for cases of admission under Local Rules 83.9.1, .2 and .4.

**LR 83.10 Continuances because of Conflicts with Other Courts, Availability of Counsel, and Other Reasons.**

**LR 83.10.1 Observation of Dates and Times.**

All members of the bar of this court and those permitted to practice in a particular action shall strictly observe the dates fixed for hearings on motions, conferences and trials.

**LR 83.10.2 (Reserved)**

**LR 83.10.3 Illness.**

Illnesses of parties and material witnesses shall be substantiated by a current medical certificate.

**LR 83.10.4 Subpoena Requirement.**

No trial shall be continued on account of the absence of any witness unless a subpoena for the attendance of such witness has been served at least five (5) days prior to the date set for trial. This rule shall not dispense with the obligation to take the depositions of any witness where the party or counsel requiring such attendance knows that such witness intends to be absent from the district at the time of trial, or where such witness is not subject to subpoena within this jurisdiction.

**LR 83.10.5 Court Conflicts.**

Conflicts with dates fixed for hearings on motions, conferences and trials will be recognized only in respect to the Supreme Court of the United States, the Court of Appeals for the Third Circuit, the Pennsylvania Supreme Court, the Pennsylvania Superior Court, and, when not sitting as a trial court, the Pennsylvania Commonwealth Court. In case of all other conflicts there shall be a member of the bar of this court or any attorney specially admitted for the purpose of the case fully prepared to proceed.

**LR 83.11 Registered Addresses.**

**LR 83.11.1 Address on File.**

An attorney admitted to the bar of this court under Local Rule 83.8 shall file with the clerk of this court an address in the state of Pennsylvania for the service or receipt of all pleadings, motions, notices, and other papers served or sent pursuant to any statute or applicable rule. Any changes of address shall be reported promptly. The clerk may maintain this registry, by card or other format, singularly or in conjunction with the roll of attorneys.

**LR 83.11.2 Latest Address**

In cases of attorneys admitted for a particular case under Local Rules 83.9.1, .2, .3, and .4, the registered address of each such attorney shall be the latest address appearing in that case file.

**LR 83.12 Associate Counsel Required.**

Any attorney who is not eligible for admission to the bar of this court under Local Rule 83.8 or Local Rule 83.9.1, .2, or .4, shall, in each proceeding in which he or she appears, have associate counsel who is admitted to practice in this court, whose appearance shall also be entered of record and upon whom all pleadings, motions, notices, and other papers may be served in accordance with any statute or applicable rule. The attendance of any such associate counsel upon the hearing of any motion or the taking of any testimony shall be sufficient appearance for the party or parties represented by such associate counsel. If any such non-resident attorney is unavailable for any hearings or motions, arguments, conferences and

trials, associate counsel shall be fully prepared to proceed therewith.

**LR 83.13 Roll of Attorneys.**

An alphabetical roll of the attorneys admitted to practice in this court under Local Rule 83.8 shall be kept by the clerk in a format approved by the court. Said record shall contain the full name of each attorney, his or her residence, the date of admission and upon whose motion the admission was allowed.

**LR 83.14 Appearance.**

The signing of a pleading or motion shall be deemed an entry of appearance. Appearance by attorneys or parties not signing pleadings or motions shall be by praecipe filed with the clerk except as provided in Local Rule 83.12.

**LR 83.15 Withdrawal of Appearance.**

Appearance of counsel shall not be withdrawn except by leave of court. The court may refuse to approve withdrawal. If counsel is superseded by new counsel, such new counsel shall enter an appearance and counsel who is superseded shall comply with this rule and apply for leave to withdraw from the action. The court may refuse to grant a motion for leave to withdraw unless substitute counsel has entered an appearance.

**LR 83.16 Warrant of Attorney.**

The court may require any attorney to file his or her warrant of attorney.

**LR 83.17 Agreements To Be In Writing.**

All agreements of attorneys relating to the conduct of any business before the court not made in open court shall be in writing, or otherwise they will not be enforced.

**LR 83.18 Appearance of Parties Not Represented by Counsel.**

Whenever a party by whom or on whose behalf an initial paper is offered for filing is not represented in the action, such party shall maintain on file with the clerk a current address at which all notices and copies of pleadings, motions or papers in the action may be served upon such party. Service of any notices, copies of pleadings, motions or papers in the action at the address currently maintained on file in the clerk's office by a party shall be deemed to be effective service upon such party.

**LR 83.19 Student Practice Rule.**

**(a) Purpose.**

The following Student Practice Rule is designed to encourage law schools to provide clinical instruction in litigation of varying kinds, and thereby enhance the competence of lawyers in practice before the United States District Court.

**(b) Student Requirements.**

An eligible student must:

(1) be duly enrolled in a law school;

(2) have completed at least four (4) semesters of legal studies, or the equivalent;
(3) be enrolled for credit in a law school clinical program which has been certified by this court;
(4) be certified by the Dean of the law school, or the Dean's designee, as being of good character and sufficient legal ability, in accordance with Section 13 above, to fulfill the responsibilities as a legal intern to both the client and this court;
(5) be certified by this court to practice pursuant to this rule;
(6) not accept personal compensation for legal services from a client or other source;
(7) be introduced to the judge before whom the student is to practice by the supervising attorney.

**(c) Program Requirements.**

The program:
(1) must be a law school clinical practice program for credit, in which a law student obtains academic and practice advocacy training, utilizing law school faculty for practice supervision, including federal government attorneys, private practitioners, or attorneys working for public defender offices, district attorney offices, the Office of Attorney General, or legal services programs, providing all such attorneys utilized for this purpose have been admitted to practice in this court;
(2) must be certified by this court;
(3) must be conducted in such a manner as not to conflict with normal court schedules;
(4) may accept compensation other than from a client;
(5) must secure and maintain professional liability insurance for its activities and file a certificate of such insurance with the clerk of court.

**(d) Supervisor Requirements.**

A supervisor must:
(1) have faculty or adjunct faculty status at the responsible law school and be certified by the Dean of the law school as being of good character and sufficient legal ability and as being adequately trained to fulfill the responsibilities as a supervisor, or in the alternative must be approved by either the court or the Dean of the law school;
(2) be admitted to practice in this court;
(3) be present with the student at all times in court, and at other proceedings, including depositions, in which testimony is taken;
(4) co-sign all pleadings or other documents filed with this court;
(5) assume full personal professional responsibility for the student's guidance in any work undertaken and for the quality of a student's work, and be available for consultation with represented clients;
(6) assist and counsel the student in activities mentioned in this rule, and review such activities with the student, to the extent required for the proper practical training of the student and the protection of the client;
(7) be responsible to supplement oral or written work of the student as necessary to ensure proper representation of the client.

**(e) Certification of Student, Program and Supervisor.**

**(1) Students**

a. Certification by the law school Dean and approval by this court shall be filed with the clerk of court, and unless it is sooner withdrawn, shall remain in effect until expiration of 18 months;

b. Certification to appear in a particular case may be withdrawn by this court at any time, in the discretion of the court, and without any showing of cause.

**(2) Program**

a. Certification of a program by this court shall be filed with the clerk of court and shall remain in effect indefinitely unless withdrawn by the court;

b. Certification of a program may be withdrawn by this court at any time;

**(3) Supervisor**

a. Certification of a supervisor must be filed with the clerk of court, and shall remain in effect indefinitely unless withdrawn by this court;

b. Certification of a supervisor may be withdrawn by this court at any time;

c. Certification of a supervisor may be withdrawn by the Dean by mailing the notice to that effect to the clerk of court.

**(f) Activities.**

A certified student, under the personal supervision of the supervisor, as set forth in Part (d) of this rule, may:

(1) represent any client including federal, state or local government bodies, in any civil or administrative matter, if the client on whose behalf the student is appearing has indicated in writing their consent to that appearance and the supervising lawyer has also indicated in writing, approval of that appearance;

(2) engage in all activities on behalf of the clients that a licensed attorney may engage in.

**(g) Limitation of Activities.**

The court retains the power to limit a student's participation in any particular case to such activities as the court deems consistent with the appropriate administration of justice.

## CHAPTER XVII

## ATTORNEY DISCIPLINARY ENFORCEMENT

### LR 83.20 Attorneys Convicted of Crimes.

### LR 83.20.1 Immediate Suspension.

Upon the filing with this court of a certified copy of a judgment of conviction demonstrating that any attorney admitted to practice before this court has been convicted in any court of the United States, or the District of Columbia, or of any state, territory, commonwealth or possession of the United States, of a serious crime as hereinafter defined, the court shall enter an order immediately suspending that attorney, whether the conviction resulted from a plea of guilty or *nolo contendere* or from a verdict after trial or otherwise, and regardless of the pendency of any appeal, until final disposition of a disciplinary proceeding to be commenced upon such conviction. A copy of such order shall immediately be served upon the attorney. Upon good cause shown, the court may set aside such order when it appears in the interest of justice.

### LR 83.20.2 Definition of Serious Crime.

The term "serious crime" shall include any felony and any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime in the jurisdiction where the judgment was entered, involves false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a "serious crime."

### LR 83.20.3 Certified Copy of Conviction as Evidence.

A certified copy of a judgment of conviction of an attorney for any crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against that attorney based upon the conviction.

### LR 83.20.4 Mandatory Reference for Disciplinary Proceeding.

Upon the filing of a certified copy of a judgment of conviction of an attorney for a serious crime, the court shall in addition to suspending that attorney in accordance with the provisions of this rule, also refer the matter to counsel for the institution of a disciplinary proceeding before the court in which the sole issue to be determined shall be the extent of the final discipline to be imposed as a result of the conduct resulting in the conviction, provided that a disciplinary proceeding so instituted will not be brought to final hearing until all appeals from the conviction are concluded.

### LR 83.20.5 Discretionary Reference for Disciplinary Proceedings.

Upon the filing of a certified copy of a judgment of conviction of an attorney for a crime not constituting a serious crime, the court may refer the matter to counsel for whatever action counsel

may deem warranted, including the institution of a disciplinary proceeding before the court; provided, however, that the court may in its discretion make no reference with respect to convictions for minor offenses.

**LR 83.20.6 Reinstatement upon Reversal.**

An attorney suspended under the provisions of this rule will be reinstated immediately upon the filing of a certificate demonstrating that the underlying conviction of a serious crime has been reversed but the reinstatement will not terminate any disciplinary proceeding then pending against the attorney, the disposition of which shall be determined by the court on the basis of all available evidence pertaining to both guilt and the extent of discipline to be imposed.

**LR 83.21 Discipline Imposed by Other Courts.**

**LR 83.21.1 Notice by Attorney of Public Discipline.**

Any attorney admitted to practice before this court shall, upon being subjected to public discipline by any other court of the United States or the District of Columbia, or by a court of any state, territory, commonwealth or possession of the United States, promptly inform the clerk of this court of such action.

**LR 83.21.2 Proceedings after Notice of Discipline.**

Upon the filing of a certified or exemplified copy of a judgment or order demonstrating that an attorney admitted to practice before this court has been disciplined by another court, this court shall forthwith issue a notice directed to the attorney containing:

(a) A copy of the judgment or order from the other court and

(b) An order to show cause directing that the attorney inform this court within thirty (30) days after service of that order upon the attorney, personally or by mail, of any claim by the attorney predicated upon the grounds set forth in Local Rule 83.21.4 that the imposition of the identical discipline by the court would be unwarranted and the reasons therefor.

**LR 83.21.3 Stay of Discipline in Other Jurisdiction.**

In the event the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in this court shall be deferred until such stay expires.

**LR 83.21.4 Reciprocal Discipline.**

Upon the expiration of thirty (30) days from service of the notice issued pursuant to the provisions of Local Rule 83.21.2(b) above, this court shall impose the identical discipline unless the respondent attorney demonstrates, or this court finds, that upon the face of the record upon which the discipline in another jurisdiction is predicated it clearly appears:

(a) That the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(b) That there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that this court could not, consistent with its duty, accept as final the conclusion on that subject; or

(c) That the imposition of the same discipline by this court would result in grave injustice; or
(d) That the misconduct established is deemed by this court to warrant substantially different discipline.

Where this court determines that any of said elements exist, it shall enter such other order as it deems appropriate.

**LR 83.21.5 Conclusive Evidence of Final Adjudication.**

In all other respects, a final adjudication in another court that an attorney has been guilty of misconduct shall establish conclusively the misconduct for the purposes of a disciplinary proceeding in this court.

**LR 83.21.6 Appointment of Counsel.**

This court may at any stage appoint counsel to prosecute the disciplinary proceedings.

**LR 83.22 Disbarment on Consent or Resignation in Other Courts.**

**LR 83.22.1 Automatic Cessation of Right to Practice.**

Any attorney admitted to practice before this court who shall be disbarred on consent or resign from the bar of any other court of the United States or the District of Columbia, or from the bar of any state, territory, commonwealth or possession of the United States, while an investigation into allegations of misconduct is pending, shall, upon the filing with this court of a certified or exemplified copy of the judgment or order accepting such disbarment on consent or resignation, cease to be permitted to practice before this court and be stricken from the roll of attorneys admitted to practice before this court.

**LR 83.22.2 Attorney to Notify Clerk of Disbarment.**

Any attorney admitted to practice before this court shall, upon being disbarred on consent or resigning from the bar of any other court of the United States or the District of Columbia or from the bar of any state, territory, commonwealth or possession of the United States, while an investigation into allegations of misconduct is pending, promptly inform the clerk of this court of such disbarment on consent or resignation.

**LR 83.23 Standards for Professional Conduct.**

**LR 83.23.1 Sanction for Misconduct.**

For misconduct defined in these rules, and for good cause shown, and after notice and opportunity to be heard any attorney admitted to practice before this court may be disbarred, suspended from practice before this court, reprimanded or subjected to such other disciplinary action as the circumstances may warrant.

**LR 83.23.2 Adoption of Rules of Professional Conduct.**

Acts or omissions by an attorney admitted to practice before this court, individually or in concert with any other person or persons, which violate the Rules of Professional Conduct adopted by this court, shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship. The Rules of Professional Conduct adopted by this court are: (1) the Rules of Professional Conduct adopted by the Supreme Court of Pennsylvania, except Rule 3.10, as amended from time to time by that court, unless specifically excepted in this court's rules; and (2) the Code of Professional Conduct enacted in the Middle District of Pennsylvania's Civil Justice Reform Act Plan. See Appendix C.

**LR 83.24 Disciplinary Proceedings.**

**LR 83.24.1 Reference to Counsel.**

When misconduct or allegations of misconduct which, if substantiated, would warrant discipline on the part of an attorney admitted to practice before this court shall come to the attention of a judge of this court, whether by complaint or otherwise, and the applicable procedure is not otherwise mandated by these rules, the judge shall refer the matter to counsel for investigation and the prosecution of a formal disciplinary proceeding or the formulation of such other recommendation as may be appropriate.

**LR 83.24.2 Recommendation of Counsel.**

Should counsel conclude after investigation and review that a formal disciplinary proceeding should not be initiated against the respondent attorney because sufficient evidence is not present, or because there is pending another proceeding against the respondent attorney, the disposition of which in the judgment of the counsel should be awaited before further action by this court is considered or for any other valid reason, counsel shall file with this court a recommendation for disposition of the matter, whether by dismissal, admonition, deferral, or otherwise setting forth the reasons therefor.

**LR 83.24.3 Order to Show Cause.**

To initiate formal disciplinary proceedings, counsel shall obtain an order of this court upon a showing of probable cause requiring the respondent - attorney to show cause within thirty (30) days after service of that order upon that attorney, personally or by mail, why the attorney should not be disciplined.

**LR 83.24.4 Hearings.**

Upon the respondent - attorney's answer to the order to show cause, if any issue of fact is raised or the respondent - attorney wishes to be heard in mitigation, this court shall set the matter for prompt hearing before one or more judges of this court, provided, however, that if the disciplinary proceeding is predicated upon the complaint of a judge of this court the hearing shall be conducted before a panel of three other judges of this court appointed by the chief judge, or if there are less than three judges eligible to serve or the chief judge is the complainant, by the chief judge of the court of appeals for this circuit. Where a judge merely refers a matter and is not

involved in the proceeding, the judge shall not be considered a complainant.

### LR 83.25 Disbarment on Consent While under Disciplinary Investigation or Prosecution.

#### LR 83.25.1 Consent to Disbarment.

Any attorney admitted to practice before this court who is the subject of an investigation into, or a pending proceeding involving, allegations of misconduct may consent to disbarment, but only by delivering to this court an affidavit stating that the attorney desires to consent to disbarment and that:

(a) The attorney's consent is freely and voluntarily rendered; the attorney is not being subjected to coercion or duress; the attorney is fully aware of the implications of so consenting;

(b) The attorney is aware that there is a presently pending investigation or proceeding involving allegations that there exist grounds for the attorney's discipline, the nature of which the attorney shall specifically set forth;

(c) The attorney acknowledges that the material facts so alleged are true; and

(d) The attorney so consents because the attorney knows that if charges were predicated upon the matters under investigation, or if the proceeding were prosecuted, the attorney could not successfully defend himself or herself.

#### LR 83.25.2 Consent Order.

Upon receipt of the required affidavit, this court shall enter an order disbarring the attorney.

#### LR 83.25.3 Public Record.

The order disbarring the attorney on consent shall be a matter of public record. However, the affidavit required under the provisions of this rule shall not be publicly disclosed or made available for use in any other proceeding except upon order of this court.

### LR 83.26 Reinstatement.

#### LR 83.26.1 After Disbarment or Suspension.

An attorney suspended for three (3) months or less shall be automatically reinstated at the end of the period of suspension upon the filing with the court of an affidavit of compliance with the provisions of the order. An attorney suspended for more than three (3) months or disbarred may not resume practice until reinstated by order of this court.

#### LR 83.26.2 Time of Application Following Disbarment.

A person who has been disbarred after hearing or by consent may not apply for reinstatement until the expiration of at least five (5) years from the effective date of this disbarment.

**LR 83.26.3 Petitions for Reinstatement.**

Petitions for reinstatement by a disbarred or suspended attorney under this rule shall be filed with the chief judge of this court.

(a) Upon receipt of the petition, the chief judge shall determine whether the attorney is entitled to reinstatement without a hearing and issue an appropriate order.

(b) If the petitioner is not entitled to reinstatement without a hearing the chief judge shall promptly refer the petition to counsel and shall assign the matter for prompt hearing before one or more judges of this court, provided, however, that if the disciplinary proceeding was predicated upon the complaint of a judge of this court, the hearing shall be conducted before a panel of three (3) other judges of this court appointed by the chief judge, or, if there are less than three (3) judges eligible to serve or the chief judge was the complainant, by the chief judge of the court of appeals for this circuit. The judge or judges assigned to the matter shall within thirty (30) days after referral schedule a hearing at which the petitioner shall have the burden of demonstrating by clear and convincing evidence that he or she has the moral qualifications, competency and learning in the law required for admission to practice law before this court and that his or her resumption of the practice of law will not be detrimental to the integrity and standing of the bar or to the administration of justice, or subversive of the public interest.

**LR 83.26.4 Duty of Counsel.**

In all proceedings upon a petition for reinstatement, cross-examination of the witnesses of the respondent-attorney and the submission of evidence, if any, in opposition to the petition shall be conducted by counsel.

**LR 83.26.5 Fees and Costs of Proceeding.**

Upon order of court at the conclusion of any reinstatement proceeding, costs may be assessed to the petitioner. The Clerk of Court shall account for these costs in the same manner as general attorney admissions.

**LR 83.26.6 Conditions of Reinstatement.**

If the petitioner is found unfit to resume the practice of law, the petition shall be dismissed. If the petitioner is found fit to resume the practice of law, the judgment shall reinstate the petitioner, provided that the judgment may make reinstatement conditional upon the payment of all or part of the costs of the proceedings, and upon the making of partial or complete restitution to parties harmed by the petitioner whose conduct led to the suspension or disbarment. Provided further, that if the petitioner has been suspended or disbarred for five (5) years or more, reinstatement may be conditioned, in the discretion of the judge or judges before whom the matter is heard, upon the furnishing of proof of competency and learning in the law, which proof may include certification by the bar examiners of a state or other jurisdiction of the attorney's successful completion of an examination for admission to practice subsequent to the date of suspension or disbarment.

**LR 83.26.7 Successive Petitions.**

No petition for reinstatement under this rule shall be filed within one (1) year following an adverse judgment upon a petition for reinstatement filed by or on behalf of the same person.

**LR 83.27 Admission to Practice as Conferring Disciplinary Jurisdiction.**

Whenever an attorney applies to be admitted or is admitted to this court for purposes of a particular proceeding (*pro hac vice*), the attorney shall be deemed thereby to have conferred disciplinary jurisdiction upon this court for any alleged misconduct of that attorney arising in the course of or in the preparation for such proceeding.

**LR 83.28 Service of Papers and Other Notices.**

Service of an order to show cause instituting a formal disciplinary proceeding or other papers or notices required by these rules shall be made by personal service or by registered or certified mail addressed to the respondent-attorney at the address most recently registered by the attorney with the clerk. Service of any other papers or notices required by these rules shall be deemed to have been made if such paper or notice is addressed to the respondent-attorney at the address shown on the most recent registration statement filed pursuant to Local Rule 83.11.1; or to counsel or the respondent's attorney at the address indicated in the most recent pleading or other document filed by them in the course of any proceeding under these rules.

**LR 83.29 Appointment of Counsel.**

Whenever counsel is to be appointed pursuant to these rules to investigate allegations of misconduct or to prosecute disciplinary proceedings or in conjunction with a reinstatement petition filed by a disciplined attorney, this court in its discretion and with prior agreement of the Disciplinary Board of the Supreme Court of Pennsylvania shall appoint as counsel attorneys serving in the Office of Disciplinary Counsel of the Disciplinary Board or one or more members of the bar of this court to investigate allegations of misconduct or to prosecute disciplinary proceedings under these rules or in conjunction with such a reinstatement petition, provided, however, that the respondent-attorney may move to disqualify an attorney so appointed who is or has been engaged as an adversary of the respondent-attorney in any matter. Counsel, once appointed, may not resign unless permission to do so is given by this court.

**LR 83.30 Duties of the Clerk.**

**LR 83.30.1 Filing Certificate of Conviction.**

Upon being informed that an attorney admitted to practice before this court has been convicted of any crime, the clerk of this court shall determine whether the clerk of the court in which such conviction occurred has forwarded a certificate of such conviction to this court. If a certificate has not been so forwarded, the clerk of this court shall promptly obtain a certificate and file it with this court.

**LR 83.30.2 Filing Disciplinary Judgment.**

Upon being informed that an attorney admitted to practice before this court has been

subjected to discipline by another court, the clerk of this court shall determine whether a certified or exemplified copy of the disciplinary judgment or order has been filed with this court, and, if not, the clerk shall promptly obtain a certified or exemplified copy of the disciplinary judgment or order and file it with this court.

**LR 83.30.3 Filing Consent Order.**

Upon being informed that an attorney admitted to practice before this court has been disbarred on consent or resigned in another jurisdiction while an investigation into allegations of misconduct was pending, the clerk of this court shall determine whether a certified or exemplified copy of the disciplinary judgment or order striking the attorney's name from the rolls of those admitted to practice has been filed with the court, and, if not, shall promptly obtain a certified or exemplified copy of such judgment or order and file it with the court.

**LR 83.30.4 Transmittal of Record to Other Courts.**

Whenever it appears that any person convicted of any crime or disbarred or suspended or censured or disbarred on consent by this court is admitted to practice law in any other jurisdiction or before any other court, the clerk of this court shall, within ten (10) days of that conviction, disbarment, suspension, censure, or disbarment on consent, transmit to the disciplinary authority in such other jurisdiction, or for such other court, a certificate of the conviction or a certified or exemplified copy of the judgment or order of disbarment, suspension, censure, or disbarment on consent, as well as the last known office and residence addresses of the defendant or respondent.

**LR 83.30.5 National Discipline Data Bank.**

The clerk of this court shall promptly notify the National Discipline Data Bank operated by the American Bar Association of any order imposing public discipline upon any attorney admitted to practice before this court.

**LR 83.31 Court defined.**

When in this Chapter reference is made to this court it shall mean the United States District Court for the Middle District of Pennsylvania. Administration of this Chapter shall be under the authority of the Chief Judge. Actions and proceedings under this Chapter shall be taken by the Chief Judge of this court or the designee(s) of the Chief Judge.

## CHAPTER XVIII

## HABEAS CORPUS AND MOTIONS ATTACKING SENTENCE AND APPEALS WHERE PARTY IS INCARCERATED

### LR 83.32 Petitions for Writ of Habeas Corpus and Motions Pursuant to 28 U.S.C. § 2255.

### LR 83.32.1 Form of Petitions and Motions.

A petition for a writ of habeas corpus by a person who is in custody or who faces future custody pursuant to the judgment or order of a federal or state court or agency, or a motion pursuant to 28 U.S.C. § 2255 attacking a sentence imposed by this court, shall be filed according to these Rules. The facts and statements contained in the petition or motion shall be verified under penalty of perjury by the petitioner's or movant's signature. The petition or motion, unless prepared by counsel, shall be on the standard form supplied by the clerk of court when the petition or motion is a § 2241 or a § 2254 habeas corpus petition or a § 2255 motion. When the petition or motion is filed by counsel, the standard form need not be used, but the petition or motion shall contain the same categories of information and shall address the same matters as provided for by the standard form, and the petition or motion shall be double spaced and shall be no more than fifteen (15) pages in length. The *Rules Governing § 2254 Cases In The United States District Courts* and the *Rules Governing § 2255 Proceedings For The United States District Courts*, adopted by the Supreme Court of the United States, are a part of the Rules of this District applicable to § 2254 habeas corpus cases and § 2255 motions. A petition for a writ of habeas corpus in a death penalty case shall be governed by Local Rule 83.32.2.

### LR 83.32.2 Petitions under 28 U.S.C. § 2254 and Motions to Vacate Sentence under 28 U.S.C. § 2255 in Death Penalty Cases.

In a death penalty case:

A. A petition for a writ of habeas corpus under 28 U.S.C. § 2254 or a motion to vacate sentence under 28 U.S.C. § 2255 must be accompanied by a cover sheet that lists:
   1. petitioner's full name and prisoner number; if prosecuted under a different name or alias that name must be indicated;
   2. name of person having custody of petitioner (warden, superintendent, etc.);
   3. petitioner's address;
   4. name of trial judge;
   5. court term and bill of information or indictment number;
   6. charges of which petitioner was convicted;
   7. sentence for each of the charges;
   8. plea entered;

9. whether trial was by jury or to the bench;
10. date of filing, docket numbers, dates of decision and results of direct appeal of the conviction;
11. date of filing, docket numbers, dates of decision and results of any state collateral attack on a state conviction including appeals;
12. date of filing, docket numbers, dates of decision of any prior federal habeas corpus or § 2255 proceedings, including appeals;
13. name and address of each attorney who represented petitioner, identifying the stage at which the attorney represented the litigant.

B. A petition for writ of habeas corpus under 28 U.S.C. § 2254 or motion to vacate sentence under 28 U.S.C. § 2255:
   1. must list every ground on which the petitioner claims to be entitled to relief under 28 U.S.C. § 2254 ( or § 2255 for federal prisoners) followed by a concise statement of the material facts supporting the claims;
   2. must identify at what stage of the proceedings each claim was exhausted in state court if the petition seeks relief from a state court judgment;
   3. must contain a table of contents if the petition is more than 25 pages;
   4. may contain citation to legal authority that form the basis of the claim.

C. Petitioner must file and serve, not later than 60 days after the date of the filing of the petition under § 2254, or motion to vacate sentence under § 2255, a memorandum of law in support. The memorandum of law:
   1. must contain a statement of the case;
   2. must contain a table of contents if it is more than 25 pages.

D. The petition/motion and memorandum together must not exceed 100 pages.

E. All documents filed must be succinct and must avoid repetition.

F. Respondent need not file a response until the petitioner's supporting memorandum of law is served:
   1. The response must not exceed 100 pages.
   2. The response must contain a table of contents if it is more than 25 pages.
   3. The response must be filed and served within 60 days of service of the petitioner's supporting memorandum of law.

G. Any reply to the response must be filed and served within 21 days of service of the response and may not exceed 30 pages.

H. Upon motion and for good cause shown, the judge may extend the page limits for any document.

I. Upon motion and for good cause shown, the judge may extend the time for filing any document.

J. The petitioner must file with the Clerk of the District Court a copy of the "Certificate of Death Penalty Case' required by Third Circuit L.A.R. Misc. 111.2(a). Upon docketing, the clerk of the district court will transmit a copy of the certificate, together with a copy of the petition to the Clerk of the Court of Appeals as required by Third Circuit L.A.R. Misc. 111.2(a).

K. Upon the entry of a warrant or order setting an execution date in any case within the geographical boundaries of this district, and in aid of this court's potential jurisdiction, the clerk is directed to monitor the status of the execution and any pending litigation and to establish communications with all parties and relevant state and/or federal courts. Without further order of this court, the clerk may, prior to the filing of a petition, direct parties to lodge with this court (1) relevant portions of previous state and/or federal court records, or the entire record, and (2) pleadings, briefs, and transcripts of any ongoing proceedings. To prevent delay, the case may be assigned to a judge, by the same selection process as for other cases, prior to the execution date. The identity of the judge assigned shall not be disclosed until a petition is actually docketed.

L. In accordance with Third Circuit L.A.R. Misc. 111.3(b), at the time a final decision is entered, the court shall state whether a certificate of appealablity is granted or denied. If a certificate of appealability is granted, the court must state the issues that merit the granting of a certificate and must also grant a stay pending disposition of the appeal, except as provided in 28 U.S.C. § 2262.

**LR 83.32.3 *In Forma Pauperis* Proceedings.**

**(a) Affidavit Required.**

A petitioner or movant seeking to proceed *in forma pauperis* must complete the *in forma pauperis* affidavit or declaration attached at the back of the petition for a writ of habeas corpus and shall set forth information which establishes, pursuant to 28 U.S.C. § 1915, that he or she is unable to pay the fees and costs, or give security therefor. In the absence of exceptional circumstances, leave to proceed *in forma pauperis* may be denied if the value of the money and securities in the petitioner's institutional account exceeds fifty dollars ($50.00).

**(b) Warden's Certificate.**

Under Rule 3 of the rules governing § 2254 cases a certificate of the warden or other appropriate officer of the institution in which the petitioner is confined is required in addition to the affidavit or declaration of poverty. Such a certificate is provided at the end of the standard form for filing § 2254 cases, and this certificate must be completed and returned with the forms. The certificate may be considered by the court in acting upon the request to proceed *in forma pauperis*.

**LR 83.32.4 Addresses and Reference of Petitions and Motions.**

Petitions and motions shall be addressed to the Clerk of the United States District Court for the Middle District of Pennsylvania. Petitioners or movants shall send to the clerk an original and a sufficient number of copies of the completed petition or motion for service on all named respondents. A petition or motion addressed to an individual judge shall be directed to the clerk of the court for processing. Whenever possible, successive petitions and motions by a person in custody shall be directed by the clerk to the judge who handled prior petitions and motions by such person.

**LR 83.33 Time for Appeal Where Party is Incarcerated.**

When it appears that a party who is incarcerated has delivered a notice of appeal within thirty (30) days after the entry of a civil judgment to the authorities in charge of that party's incarceration, the time for filing the notice of appeal is extended for a period not to exceed thirty (30) days in order to allow for the handling and transmission of the notice of appeal by the authorities to the clerk of the court.

## CHAPTER XIX

## *PRO BONO* ATTORNEYS FOR INDIGENT LITIGANTS

### LR 83.34 Administration of *Pro Bono* Program

**LR 83.34.1 Indigent Litigant Application for a Volunteer Attorney.**

A *Pro Se* indigent litigant may apply to the court to have a volunteer attorney appointed to represent the litigant in a civil case.

**LR 83.34.2 Request for Volunteer Attorney.**

A judge may request a member of the bar of this court to enter his or her appearance for an indigent civil litigant.

**LR 83.34.3 Panel of Volunteer Attorneys.**

The Middle District Chapter of the Federal Bar Association has assembled a panel of volunteer attorneys who will consider representing indigent civil litigants at the request of the court. The court may present a request for a volunteer attorney to the *pro bono* chair of the Middle District Chapter to the Federal Bar Association.

**LR 83.34.4 Mechanism for Requesting Volunteer Attorney.**

When the court makes a determination that a request for a volunteer attorney is appropriate, it shall conditionally grant the motion for the appointment of counsel. The court shall in its order direct that a copy of the order be sent to the *pro bono* chair of the Middle District Chapter of the Federal Bar Association and shall direct that the court be informed in due course by the *pro bono* chair whether a volunteer attorney will enter his or her appearance or, in the alternative, that no volunteer attorney accepts the appointment.

**LR 83.34.5 Revocation of Conditional Appointment Order.**

When the *pro bono* chair of the Middle District Chapter of the Federal Bar Association reports to the court that no volunteer attorney is willing to accept an appointment of counsel the court may revoke the conditional order for the appointment of counsel.

**LR 83.34.6 Procedure for Requesting Reimbursement.**

At the conclusion of a case, any court-appointed *pro bono* attorney may request reimbursement of costs necessarily incurred, not to exceed the maximum amount established by Standing Order, provided that the attorney has not received or will not receive funds sufficient to cover the costs incurred, whether by way of a monetary judgment for the client under a contingent fee arrangement, an award of attorney's fees made by the court, or other payment. A "Request for *Pro Bono* reimbursement," including an accounting of the expenses claimed, shall be submitted directly to the Chief Judge. The document shall not be filed with the Clerk. The form

must be typewritten and include the caption of the case, case number, presiding judge and be entitled "Request for *Pro Bono* Reimbursement;" the document must be signed and verified by the *pro bono* attorney requesting reimbursement.

**LR 83.34.7 Fund to Reimburse Volunteer Attorneys.**

The court has established a non-appropriated fund for the purpose of reimbursing court-appointed *pro bono* attorneys for costs necessarily incurred while representing indigent litigants in civil cases. This fund shall be referred to as the court's "*Pro Bono* Fund." The special admission fee collected by the Clerk of Court pursuant to Local Rule 83.9.5 shall be deposited into the *Pro Bono* Fund, which shall be maintained by the Clerk of Court as trustee in a specially designated account. The Clerk of Court shall account for and disburse sums from the *Pro Bono* fund pursuant to guidelines established by the court through a Standing Order.

# CHAPTER XX

# SOCIAL SECURITY APPEALS

## LR 83.40 Social Security Disability case procedures.

### LR 83.40.1 Form of Review.

A civil action brought to review a decision of the Social Security Administration denying a claim for social security disability benefits shall be adjudicated as an appeal pursuant to this rule.

### LR 83.40.2 Summons and Complaint.

The plaintiff shall cause the summons and complaint to be served upon the defendant in the manner specified by Rule 4(i) within ten (10) days of the date of filing the complaint with the Clerk of Court.

### LR 83.40.3 Answer and Transcript.

Defendant shall serve and file an answer, together with a certified copy of the transcript of the administrative record, within sixty (60) days of service of the complaint.

### LR 83.40.4 Plaintiff's Brief.

Plaintiff shall serve and file a brief within forty-five (45) days of service of defendant's answer that shall comply with the following requirements:

**(a) Statement of the case.**

This statement shall briefly outline the course of the proceedings and its disposition at the administrative level and shall set forth a brief statement of pertinent facts. This statement of facts shall include plaintiff's age, education and work experience, a summary of the physical and mental impairments alleged; and a brief outline of the pertinent factual, medical and/or vocational evidence of record. Each statement of fact shall be supported by reference to the page(s) in the record where the evidence may be located.

**(b) Statement of errors.**

This statement shall set forth in separate numbered paragraphs the specific errors committed at the administrative level which entitle plaintiff to relief. The court will consider only those errors specifically identified in the briefs. A general argument that the findings of the administrative law judge are not supported by substantial evidence is not sufficient.

**(c) Argument.**

The argument shall be divided into sections separately addressing each issue and shall set forth the contentions of plaintiff with respect to each issue and the reasons therefor. Each contention must be supported by specific reference to the portion of the record relied upon and by citations to statutes, regulations and cases supporting plaintiff's position.

**(d) Conclusion.**

The plaintiff's brief shall conclude with a short statement of the relief sought.

**LR 83.40.5 Defendant's Brief.**

Within thirty (30) days after service of plaintiff's brief, defendant shall file and serve upon opposing counsel a brief which responds specifically to each issue raised by the plaintiff. The response shall not address matters not put at issue by the plaintiff. Defendant shall not include a "statement of the case," described above, unless plaintiff's statement is inaccurate or incomplete. In that event, defendant need only address those limited areas.

**LR 83.40.6 Reply Brief.**

Plaintiff may file, and serve upon defendant, a brief in reply to the brief of defendant within ten (10) days of the filing of defendant's brief.

**LR 83.40.7 Length of Briefs.**

The brief for the plaintiff shall not exceed fifteen (15) pages. The brief for the defendant shall not exceed fifteen (15) pages. The reply brief shall not exceed ten (10) pages.

## SECTION II

## CHAPTER I

## CRIMINAL RULES

**LCrR 58.1 Magistrate Judges, Appeal from Judgments in Misdemeanor Cases - 18 U.S.C. § 3402.**

An appeal from a judgment of conviction by a United States Magistrate Judge may be taken to a judge of the district court in accordance with Rule 58 of the Federal Rules of Criminal Procedure. The appellant shall, within fifteen (15) days of the date of filing of the appeal, serve and submit a brief. The United States Attorney shall serve and submit a brief within fifteen (15) days after receipt of a copy of the appellant's brief. The appellant may serve and submit a reply brief within five (5) days after receipt of the appellee's brief. The appeal shall be considered and disposed of on the briefs without hearing or oral argument unless the judge to whom the appeal is assigned specifically directs otherwise upon an application for such hearing or argument by one or both of the parties. Any appellant who fails to comply with this rule shall be deemed to have withdrawn the appeal. If the United States Attorney in any such appeal fails to comply with this rule, it shall be deemed that the United States Attorney does not oppose the appeal.

**LCrR 58.2 Magistrate Judges, Authority for Forfeiture of Collateral.**

In accordance with Rule 58(d)(1) of the Federal Rules of Criminal Procedure this rule authorizes payment of a fixed sum (forfeiture of collateral) in lieu of appearance as provided in Standing Order #97-1, In Re: Forfeiture of Collateral Schedule, wherein the court's periodically revised collateral forfeiture order is docketed. The clerk of court shall distribute copies of the current order to all offices, agencies, and individuals involved in petty offense cases and shall make copies available generally upon request.

**LCrR 58.3 Magistrate Judges, General Provisions for Forfeiture of Collateral.**

(a) The provisions of this rule do not create or otherwise define an offense. This rule applies to petty offenses which have otherwise been created and/or defined by federal statutes, regulations, or applicable state statutes lawfully assimilated by virtue of the Assimilative Crimes Act (18 U.S.C. § 13) which petty offenses are committed within the jurisdiction of the United States District Court for the Middle District of Pennsylvania.

(b) When an "X" is inserted next to a listed violation, the arresting officer may, in his discretion, elect not to insert a forfeiture of collateral amount upon the violation notice and therefore require the mandatory appearance of the defendant. A mandatory appearance should be required where the offense is deemed by the arresting officer to be of a serious or aggravated nature. Where a particular violation is not designated by an "X" on the collateral forfeiture schedule, no mandatory appearance shall be required except as provided for in LCrR 58.3(k).

(c) When a particular violation is not listed on the most current collateral forfeiture schedule as described in LCrR 58.2, it shall be treated as one requiring the mandatory appearance of the

defendant. In these cases, forfeiture of collateral will not be permitted, and the defendant's appearance will be required. Mandatory offenses will be referred directly to the designated magistrate judge.

(d) At no time may collateral be set in an amount greater than the maximum fine authorized for the offense charged, nor may collateral be less than any mandatory minimum fine which may be required as a penalty for the offense charged. Should any collateral erroneously be set higher than the authorized maximum fine, then the collateral shall automatically be reduced to said authorized maximum fine. Should any collateral erroneously be set in an amount less than a required mandatory minimum fine, the amount of collateral shall automatically be increased to said mandatory minimum.

(e) A collateral offense shall be processed by giving an alleged offender a violation notice or citation, with mail-in envelope, setting forth the offense, the date and location thereof, name of the issuing officer, the full name, address, and any other identifying data concerning the offender and the amount of collateral which can be forfeited. It shall further contain instructions to pay the collateral to the clerk of court or, if the offender wishes to contest the charge, to indicate the option to appear before the United States Magistrate Judge for trial or other appropriate proceedings. The original and one (1) copy of such violation notices will be promptly forwarded to the clerk's office by the issuing agency.

(f) The clerk shall establish a procedure for the processing of violation notices, citations, and collateral within the clerk's office. This procedure will include one follow-up to the offender, if collateral is not received within twenty (20) days. If not then paid, the violation will be referred to a magistrate judge for processing in accordance with paragraph (j). All violation notices and citations issued to alleged offenders shall show the clerk's address for the receipt of collateral or notice that a defendant desires a hearing before the United States Magistrate Judge.

(g) For any petty offense in which collateral is not set, the defendant shall be issued a violation notice or citation containing the information required in paragraph (e) above, except that in the space provided for the amount of collateral there shall be inserted the letters "M.A.", which letters shall indicate mandatory appearance required, directing the defendant to appear before a United States Magistrate Judge at a specified date and time or otherwise indicating that the defendant will be notified when to appear in the future.

(h) If collateral is posted for any offense in which collateral is set as authorized by this rule, the collateral shall be forfeited to the United States, and forfeiture of said collateral shall signify that the defendant does not contest the charge nor request a hearing before a United States Magistrate Judge. Such action shall be tantamount to a finding of guilty, and the defendant shall be deemed convicted of any offense for which collateral is paid and forfeited.

(i) Whenever a check is returned to the clerk as uncollectible for any reason within the control of the payor, the clerk will make only one follow-up to obtain payment. After twenty (20) days and no payment, the offense for which the collateral was posted shall be referred promptly to the appropriate United States Magistrate Judge for the scheduling of a mandatory appearance or such other action as may be deemed appropriate by the United States Magistrate Judge.

(j) Failure to respond or appear.

(1) When an alleged violator fails to pay any collateral set pursuant to this rule, fails to notify the clerk of his or her desire to stand trial within thirty (30) days from the date the violation

notice or citation is issued, fails to respond to a notice to appear, fails to answer a summons to appear, or fails to appear when otherwise ordered by the United States Magistrate Judge, the United States Magistrate Judge may consider and treat the offense as a mandatory appearance offense, and thereafter refuse any tender of the payment of collateral and set the case for hearing, in which event the collateral shall automatically double from the amount originally set on the violation notice or order.

(2) A United States Magistrate Judge may also issue a warrant for the arrest of the alleged offender as authorized by Rule 4(c) of the Rules of Procedure for the Trial of Misdemeanors before United States Magistrate Judges. Should it be necessary for the court or United States Magistrate Judge to issue an arrest warrant as a result of an alleged violator's failure to appear, the amount of collateral shall automatically triple from the amount originally set on the violation notice or citation. For good cause shown, the court and/or the United States Magistrate Judge may reduce the collateral.

(k) Nothing contained herein shall prevent the United States Magistrate Judge from requiring a mandatory appearance or from issuing a notice to appear, summons or warrant of arrest in accordance with Rule 58(d) of the Federal Rules of Criminal Procedure or from refusing any tender of collateral when a hearing is scheduled, or from imposing the maximum penalty authorized by statute or regulation for the offense charged upon a plea of nolo contendere or guilty or upon a verdict of guilty.

## APPENDIX A

Attorneys for Plaintiff

Attorneys for Defendant

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

) CASE NO.
)
)
)
)
) JUDGE_____
)
)
)
)

JOINT CASE MANAGEMENT PLAN

Instructions: In many cases there will be more parties in the action than there are spaces provided in this form. Each party shall provide all requested information. If the space on this form is not sufficient, the form should be retyped or additional pages attached.

No party may submit a separate Case Management Plan. Disagreements among parties with respect to any of the matters below shall set be set forth in the appropriate section.

Having complied with the meet and confer requirements set forth in the LOCAL RULES, or with any orders specifically modifying their application in the above-captioned matter, the parties hereby submit the following Joint Case Management Plan.

(Revised 4/97)

## 1. Principal Issues

1.10 Separately for each party, please give a statement summarizing this case:

By plaintiff(s):

By defendant(s):

The principal factual issues that the parties

dispute are:

1.11

1.12

1.13

agree upon are:

1.20

1.21

1.22

1.30 The principal legal issues that the parties

dispute are:

1.31

1.32

1.33

agree upon are:

1.40

1.41

1.42

1.50 Identify any unresolved issues as to service of process, personal jurisdiction, subject matter jurisdiction, or venue:

1.60 Identify any named parties that have not yet been served:

1.70 Identify any additional parties that:

plaintiff(s) intends to join:

defendant(s) intends to join:

1.80 Identify any additional claims that:

plaintiff(s) intends to add:

defendant(s) intends to add:

**2.0 Alternative Dispute Resolution ("ADR")**

2.10 Identify any ADR procedure to which this case already has been assigned or which the parties have agreed to use.

ADR procedure_____

Date ADR to be commenced_____
Date ADR to be completed_____

2.20 If the parties have been unable to agree on an ADR procedure, but one or more parties believes that the case is appropriate for such a procedure, identify the party or parties that recommend ADR and the specific ADR process recommended:

2.30 If all parties share the view that no ADR procedure should be used in this case, set forth the basis for that view:

## 3.0 Consent to Jurisdiction by a Magistrate Judge

Indicate whether all parties agree, pursuant to 28 U.S.C. § 636(c)(1), to have a magistrate judge preside as the judge of the case with appeal lying to the United States Court of Appeals for the Third Circuit:

All parties agree to jurisdiction by a magistrate judge of this court: _ Y _ N.

If parties agree to proceed before a magistrate judge, please indicate below which location is desired for the proceedings:

___ Scranton
___ Wilkes-Barre
___ Harrisburg

## 4.0 Disclosures

4.100 Separately for each party, list by name and title/position each person whose identity has been disclosed.

4.101 Disclosed by _____:

| | Name | Title/Position |
|---|---|---|
| 4.102 | _____ | _____ |
| 4.103 | _____ | _____ |
| 4.104 | _____ | _____ |
| 4.105 | _____ | _____ |

4.151 Disclosed by _____:

| | Name | Title/Position |
|---|---|---|
| 4.152 | _____ | _____ |
| 4.153 | _____ | _____ |
| 4.154 | _____ | _____ |
| 4.155 | _____ | _____ |

4.200 Separately for each party, describe by categories the documents that have been disclosed or produced through formal discovery, indicating which categories relate (even if not exclusively) to damages:

4.201 Categories of documents disclosed by_____:

4.202_____

4.203_____

4.204_____

4.205_____

4.251 Categories of documents disclosed by_____:

4.252_____

4.253_____

4.254_____

4.255_____

4.300 Additional Documents Disclosures: Separately for each party, describe each additional category of documents that will be disclosed without imposing on other counsel the burden of serving a formal request for production of documents:

4.301 Additional categories of documents_____(party) will disclose:

4.302_____

4.303_____

4.304_____

4.351 Additional categories of documents_____(party) will disclose:

4.352_____

4.353_____

4.354_____

4.400 Separately for each party who claims an entitlement to damages or an offset, set forth the computation of the damages or of the offset:

4.401 plaintiff's calculation of damages:

4.402 defendant's calculation of offset:

4.403 counter claimant/third party claimant's calculation of damages:

**5.0 Motions**

Identify any motion(s) whose early resolution would likely have a significant effect either on the scope of discovery or other aspects of the litigation:

| Nature of Motion | Moving Party | Anticipated Filing Date |
|---|---|---|

## 6.0 Discovery

6.100 Briefly describe any discovery that has been completed or is in progress:

By plaintiff(s):

By defendant(s):

6.200 Describe any discovery that all parties agree should be conducted, indicating for each discovery undertaking its purpose or what kinds of information will be developed through it (e.g., "plaintiff will depose Mr. Jones, defendant's controller, to learn what defendant's revenue recognition policies were and how they were applied to the kinds of contracts in this case"):

6.300 Describe any discovery that one or more parties want(s) to conduct but to which another party objects, indicating for each such discovery undertaking its purpose or what kinds of information would be developed through it:

6.400 Identify any subject area limitations on discovery that one or more parties would like imposed, at the first stage of or throughout the litigation:

6.500 For each of the following discovery tools, recommend the per-party or per-side limitation (specify a number) that should be fixed, subject to later modification by stipulation or court order on an appropriate showing (where

the parties cannot agree, set forth separately the limits recommended by plaintiff(s) and by defendant(s)):

6.501 depositions (excluding experts) to be taken by:

plaintiff(s):___ defendant(s):___

6.502 interrogatories to be served by:

plaintiff(s):___ defendant(s):___

6.503 document production requests to be served by:

plaintiff(s):___ defendant(s):___

6.504 requests for admission to be served by:

plaintiff(s):___ defendant(s):___

6.600 All discovery commenced in time to be completed by: _____

6.700 Reports from retained experts due:

from plaintiff(s) by _____
from defendant(s) by _____

6.800 Supplementations due _____

## 7.0 Protective Order

7.1 If entry of a protective order is sought, attach to this statement a copy of the proposed order.

7.2 If there is a dispute about whether a protective order should be entered, or about certain terms of the proposed order, briefly summarize each party's position below:

## 8.0 Certification of Settlement Authority (All Parties Shall Complete the Certification)

I hereby certify that the following individual(s) have settlement authority.

_____
Name

_____
Title

_____

_____
Address

( )___ - ____ Daytime Telephone

_____
Name

_____
Title

_____

_____
Address

( )___ - ____ Daytime Telephone

## 9.0 Scheduling

9.1 This case may be appropriate for trial in approximately:

__ 240 Days from the filing of the action in this court

__ 365 Days from the filing of the action in this court

__ Days from the filing of the action in this court

9.2 Suggested Date for Trial:

_____ (month/year)

9.3 Suggested Date for the final Pretrial Conference:

_____ (month/year)

9.4 Final date for joining additional parties:

_____ Plaintiff(s)

_____ Defendants(s)

9.5 Final date for amending pleadings:

_____ Plaintiff(s)

_____ Defendants(s)

9.6 All potentially dispositive motions should be filed by:

_____

## 10.0 Other Matters

Make any other suggestions for the case development process, settlement, or trial that may be useful or necessary to the efficient and just resolution of the dispute.

## 11.0 Identification of Lead Counsel

Identify by name, address, and telephone number lead counsel for each party

Dated: _____

Attorney for Plaintiff(s)

Dated: _____

Attorneys for Defendant(s)

## APPENDIX B

## PRETRIAL MEMORANDUM FORMAT

**UNITED STATES DISTRICT COURT**

**FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

| | | |
|---|---|---|
| | : | |
| | : | |
| | : | |
| **v.** | : | **CIVIL ACTION NO.** |
| | : | |
| | : | |

**PRETRIAL MEMORANDUM**

Date conference was held by counsel:

A. A brief statement as to federal court jurisdiction.

B. A summary statement of facts and contentions as to liability.

C. A comprehensive statement of undisputed facts as agreed to by counsel at the conference of attorneys required by Local Rule 16.3. No facts should be denied unless opposing counsel expects to present contrary evidence or genuinely challenges the fact on credibility grounds. The parties must reach agreement on uncontested facts even though relevancy is disputed.

D. A brief description of damages, including, where applicable:

(1) Principal injuries sustained:

(2) Hospitalization and convalescence:

(3) Present disability:

(4) Special monetary damages, loss of past earnings, medical expenses,

property damages, etc.:

(5) Estimated value of pain and suffering, etc.:

(6) Special damage claims:

E. Names and addresses of witnesses, along with the specialties and qualifications of experts to be called.

F. Summary of testimony of each expert witness.

G. Special comment about pleadings and discovery, including depositions and the exchange of medical reports.

H. A summary of legal issues involved and legal authorities relied upon.

I. Stipulations desired.

J. Estimated number of trial days.

K. Any other matter pertinent to the case to be tried.

L. Pursuant to Local Rule 16.3 append to this memorandum a prenumbered schedule of exhibits, with brief identification of each, on the clerk's Exhibit Form.

M. Append any special verdict questions which counsel desires to submit.

N. Defense counsel must file a statement that the person or committee with settlement authority has been notified of the requirements of and possible sanctions under Local Rule 16.2.

O. Certificate must be filed as required under Local Rule 30.10 that counsel have met and reviewed depositions and videotapes in an effort to eliminate irrelevancies, side comments, resolved objections, and other matters not necessary for consideration by the trier of fact.

P. In all trials without a jury, requests for findings of both fact and law shall be submitted with this Memorandum as required under Local Rule 48.2.

## Appendix C

***UNITED STATES DISTRICT COURT***
***FOR THE***
***MIDDLE DISTRICT OF PENNSYLVANIA***

***CODE OF PROFESSIONAL CONDUCT***

***As a member of the Bar of the United States District Court for the Middle District of Pennsylvania, I will strive for the following professional ideal:***

1. *The rule of law will govern my entire conduct. I will not violate the law or place myself above the law.*

2. *I will treat with civility and respect the lawyers, clients, opposing parties, the court and all the officials with whom I work. Professional courtesy is compatible with vigorous advocacy and zealous representation. Even though antagonism may be expected by my client, it is not part of my duty to my client.*

3. *I will respect other lawyers' schedules as my own, and will seek agreement on meetings, depositions, hearings, and trial dates. A reasonable request for a scheduling accommodation should never be unreasonably refused.*

4. *Communications are life lines. I will keep the lines open. Telephone calls and correspondence are a two-way channel; I will respond to them promptly.*

5. *I will be punctual in appointments, communications and in honoring scheduled appearances. Neglect and tardiness are demeaning to others and to the judicial system.*

6. *I will earnestly attempt to resolve differences through negotiation, expeditiously and without needless expense.*

7. *Procedural rules are necessary to judicial order and decorum. I will be mindful that pleadings, discovery processes and motions cost time and money. I will not use them heedlessly. If an adversary is entitled to something, I will provide it without unnecessary formalities.*

8. *I will not engage in conduct that brings disorder or disruption to the courtroom. I will advise my client and witnesses appearing in court of the proper conduct expected and required there and, to the best of my ability, prevent my client and witnesses from creating disorder or disruption.*

9. *Before dates for hearings or trials are set, or if that is not feasible immediately after such date has been set, I will attempt to verify the availability of necessary participants and witnesses so I can promptly notify the court of any likely problems.*

*I agree to subscribe to the above*
*Code of Professional Conduct:*

_____

# INDEX

(References are to chapter, as indicated, or rule numbers)